

No. 11952

United States
Circuit Court of Appeals

for the Ninth Circuit

WAIALUA AGRICULTURAL COMPANY,
LIMITED, a corporation,

Appellant,

vs.

CIRACO MANEJA, et al.,

Appellees.

and

CIRACO MANEJA, et al.,

Appellants,

vs.

WAIALUA AGRICULTURAL COMPANY,
LIMITED, a corporation,

Appellee.

Transcript of Record

In Two Volumes

VOLUME II

Pages 257 to 459

AUG 18 1948

AUL P. O'BRIEN,

CLERK

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for the Territory of Hawaii

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Upon Appeal from the District Court of the United States
for the Territory of Hawaii

In the United States District Court for the
Territory of Hawaii

Civil No. 787

WAIALUA AGRICULTURAL COMPANY,
LTD.,

Plaintiff,

vs.

CIRACO MANEJA, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the U. S.
District Court, Honolulu, T. H., on September 18,
1947, at 9:00 o'clock, a.m.,

Before: Hon. Delbert E. Metzger, Judge.

Appearances: Rufus G. Poole, Esq., appearing
for the Plaintiff; E. C. Moore, Esq., appearing for
the Plaintiff; Richard Gladstein, Esq., appearing
for the Defendants.

Honolulu, T. H. [227]

PROCEEDINGS

One more point I want to mention to your Honor
and I [276] shall conclude my opening. It may
strike your Honor as possibly curious that the
Wages and Hours Division has not intervened in
this action. As your Honor knows, the law we are
concerned with here creates the office of an admin-
istrator whose duty it is to enforce the law, who

obviously has an interest, a decided interest in any litigation where some important question, where so important question as this is going to be decided I want to say for my part, I think that I have done everything necessary or possible to inform the administrator of this litigation and to make the way possible for him to intervene if he so saw fit.

I provided the regional office in San Francisco some months ago with a copy of the complaint and copies of the exhibits and advised that office of the pendency of the litigation and of the fact that we would be here on trial some time this fall. I have not heard from them since, and apparently there is nothing in the records of this Court to indicate that they have any interest in the matter. But I merely make that statement to you so that your Honor will know that we at least have not been amiss, remiss in this connection. In effect, we have invited them to come in and state their position, with which we may or may not agree in whole or in part, but we felt that they certainly had a right and perhaps a duty to express themselves on this.

Now, the Court may feel that it wants to hear from [277] the Administrator's office. I don't urge it one way or another. But I merely raise that question. The Court may feel that the Administrator ought to be heard from as a sort of third, neutral, impartial party here to inform the Court, if the Court so desires. We don't have any objection to it.

I will call as my first witness, your Honor, Mr. Hall.

JACK W. HALL

a witness in behalf of the defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Gladstein:

Q. Will you state your name please?

A. Jack W. Hall.

Q. What is your address, Mr. Hall?

A. 2955 Oahu Avenue, Honolulu.

Q. How long have you lived in the Territory?

A. Since 1935.

Q. What is your occupation?

A. I am regional director for the International Longshoremen's and Warehousemen's Union.

Q. With offices where?

A. Pier 11, Honolulu.

Q. How long have you occupied that position?

A. Since June, 1944. [278]

Q. Have your activities or has your occupation in the Territory since you arrived here always been connected with the I.L.W.U.?

A. No, it hasn't.

Q. Will you state what your activity or occupation has been?

A. When I first arrived here I worked in organizing for independent unions that were then organizing in the Territory, particularly among the longshore groups that later became part of the I.L.W.U.; later for the United Cannery, Agricultural and Packing and Allied Workers of America,

(Testimony of Jack W. Hall.)

a C.I.O. affiliate that took into membership workers in packing, canning and agricultural enterprises.

Q. Tell us something about your experience in the sugar industry or in connection with it, Mr. Hall, starting with your first contact with that industry?

A. My first direct contact with the sugar industry was in April of 1937 when I assisted a Filipino labor organization known as the Vibora Lubiminda, a Filipino organization trying to organize Filipino workers on the Island of Maui. That organizational campaign culminated in a strike that did have some success.

Q. In connection with that work and those activities that you just referred to, Mr. Hall, what contact, if any, did those activities bring you into with respect to the [279] operations of any sugar plantation?

A. I was in direct contact with the workers on Maui Agricultural Company, the Hawaiian Commercial and Sugar Company, and the Pioneer Mill Company, and the Wailuku Sugar Company, all on the Island of Maui. At that time I had no opportunity to observe mill operations because the Companies involved were rigidly excluding any outsiders as trespassers.

Q. What opportunity, if any, did you have, that were afforded you and which you took advantage of, to acquaint yourself with the work of the employees in the sugar industry?

A. We had many conferences with the workers involved to ascertain the methods of work and

(Testimony of Jack W. Hall.)

methods of compensation for the purpose of formulating demands.

Q. What was your next activity or contact with the sugar industry or any phase of it?

A. Well, that came later in '37 and in 1938 on the Island of Kauai, where following the organization of stevedores of Port Allen and Ahukini organization was spread into the plantations in that area. I lived on the Island of Kauai for almost two years and had very intimate connection both with the field and factory operations. The organizing campaign there culminated in the organization of the McBryde Sugar Company. A contract, the first one in the sugar [280] industry, was reached in 1941. Also had organization in several of the other sugar companies on that island.

Q. What experience did you have, what observations did you make in respect of the various operations or activities in the sugar industry during that two-year period?

A. During that two-year period I had gone through the McBryde mill and through the mill of the Hawaiian Sugar Company, which is now the Olokele Sugar Company, and had opportunity for observing the practices, at least in the mill yards of the other companies.

Q. Did you not have occasion to discuss with employees grievances or other matters which involved a complete discussion of the types of duties and functions of employees in various portions or aspects of the sugar industry?

(Testimony of Jack W. Hall.)

A. Yes, of course. I made it my business as a part of my job to familiarize myself with all of the processing activities——

Q. Would you say——

A. ——manufacturing activities.

Q. Go ahead. Would you say you become fully acquainted with the operations of the sugar industry including all its aspects?

A. Including all of the aspects from the cultivation and harvesting through the manufacturing and shipping processes, yes. [281]

Q. Now, after that period which you described on the Island of Kauai, what was your next contact with or experience in the sugar industry?

A. Well, during that period on Kauai I did represent the union in a number of public hearings, both before the Agricultural Adjustment Administration, before the Territorial Unemployment Compensation Bureau, in contact with the Social Security Board, involving the application of the Social Security Act, the Unemployment Compensation Law, the Sugar Act of '37, with those agencies. Also at that period we made a study of the application of the Wage and Hour Law. That was the Fair Labor Standards Act of 1938 to the sugar industry. And we came to the conclusion that the industry was violating that law in many respects. And we asked—I believe it was in 1940—that the Wage and Hour Division hold a hearing in the Territory to determine first the reasonable cost of perquisites because the valuation placed upon perquisites came into play

(Testimony of Jack W. Hall.)

both on the minimum wage provisions of the law and the overtime provisions.

The plantations were computing the reasonable cost of perquisites at six cents per hour. Some of the employees at that time were receiving a cash wage of 19 cents per hour plus this reasonable cost of six cents which the plantation contended met the minimum wage at that time of 25 cents per hour. That was 1939, not 1940. [282]

It was our belief that the cost of six cents per hour was not correct for many of the employees.

Mr. Poole: Your Honor, I don't object to the questions, to this testimony that is being given, but I do object to the speech that is now being made in the record. It is not responsive to the question. It has nothing to do with Mr. Hall's qualifications. I should like to hear how he is qualified to testify on the matters that are before us.

The Court: Sustained.

By Mr. Gladstein:

Q. Now, Mr. Hall, in connection with these projects that you have mentioned, that is, your appearances with respect to the three, a wage-hour law, social security, unemployment compensation, etc., were you required or did you make both personal, factual investigations and studies dealing with the subject?

A. I did. I was the spokesman for the union in all of those activities.

Q. And state in general, without too much detail, what studies you made and what investiga-

(Testimony of Jack W. Hall.)

tions of fact in the industry you made and what you did to familiarize yourself entirely and thoroughly with the problems and the facts to enable you to present these matters on behalf of the employees during those periods?

A. First a personal observation of the methods used; [283] second, discussion with the employees involved as to their specific duties; third, trying to apply those facts and observations to the law and to administrative opinion.

Q. Did you prepare written briefs and make oral presentations?

A. Not specifically on the Wage and Hour Law but on the other matters, yes.

Q. Did you have occasion to talk with representatives of Government on these matters that you were working on? A. Yes, I did.

Q. Did you meet any of them?

A. Mr. Howard Durham, who was agent for the Department of Labor in the Territory and who was acting for the Administrator of the Wage and Hour Law; Mr. Holcomb, who was then in charge of the local office of the Social Security Board; Captain L. Q. McComas, who was then in charge of the Bureau of Unemployment Compensation. There may have been many others.

Q. Did you ever have occasion to talk with Mr. Poole on any problem in this industry?

A. Yes, following the request for a hearing on the value of perquisites that I mentioned earlier,

(Testimony of Jack W. Hall.)

Mr. Poole came to the Territory as a representative of the Department of Labor and I discussed at that time a request for a hearing.

Q. You discussed the facts and claims and contentions [284] of the people you were representing made?

A. Not too much in detail at that time.

Q. Now, the Mr. Poole you have reference to is the Mr. Rufus Poole the attorney for the Plaintiff in this case, is that right?

A. That's right.

Q. Mr. Hall, did you ever have occasion to represent the union in any proceedings before the National Labor Relations Board dealing with this industry, sugar industry?

A. Yes, in August, in July and August of 1944 when I was the regional director for the I.L.W.U. I represented the union in proceedings before the National Labor Relations Board which were held in Hilo to determine which workers in the industry were engaged as agricultural laborers within the meaning of the National Labor Relations Act.

Q. And did you prepare and present that case as the union representative?

A. I did.

Q. Participated throughout that hearing?

A. I did.

Q. Now, have you had occasion to participate in collective bargaining negotiations with the Plain-

(Testimony of Jack W. Hall.)

tiff Company or any association representing it dealing with employees in the sugar industry?

A. Yes, I have, in 1945 and again in 1946 and this [285] year.

Q. And in addition to such collective bargaining negotiations have you had occasion to take up grievances or other matters during the contract year with representatives of industry in respect to one or another of the phases of operation or activity in this instance? A. Many times.

Q. You said that had happened numerous times, is that correct? A. That is correct.

Q. Did you have occasion, have you had occasion to participate in conferences with union members who are workers in one or another of the sugar plantations where problems have been discussed with respect to the operations and activities of the Company? A. Many times.

Q. Now, with respect of the settlement of the wage-hour suit last year, did you not have occasion to participate in conferences both with representatives of industry and conferences with me as counsel for the employees dealing with this suit and the questions involved in this suit?

A. I was constantly involved in those suits from the moment they were in the process of preparation until the final declaratory judgment.

Q. And you spent many hours in a discussion of the [286] facts, problems and legal issues with me on those cases, is that right?

A. That's correct.

(Testimony of Jack W. Hall.)

Q. And also with Mr. Winn, Montgomery Winn, who was representing the H.S.P.A., is that right?

A. That's right.

Q. And also in conference where other representatives of management were present, isn't that true? A. That's true.

Q. Have you ever been employed by any government agency?

A. Yes, I worked for the Territorial Department of Labor from April 1942 until June of 1944.

Q. In what capacity?

A. First as an inspector in the Wage and Hour Division; later as senior inspector in that division.

Q. And in that connection what, if any, contact did you have with the Wage and Hour Division under the Federal Act?

A. We had frequent consultation with the individuals in charge of the Department of Labor here, who also administered the wage-hour law, first Mr. Durham, Howard E. Durham, and later Mr. Ernest E. Norbeck.

Q. Now, did that work and those conferences, contacts that occurred in connection with the performance of your [287] duties for Wage-Hour in the Territory bring you into contact with various facets of the sugar industry?

A. That is correct. We had discussion on what we believed at that time was coverage under the Territorial Act and what we believed was coverage under the Federal Act insofar as the sugar industry was concerned.

(Testimony of Jack W. Hall.)

Q. Have you personally been through the operations at the Plaintiff's plant at Waialua?

A. I can't recall that I have been through, specifically through all of that mill. I have been in parts of it. But the process is the same generally in all mills.

Q. How many mills would you say you have been in or through and observed operations?

A. I would say over half in the Territory.

Q. How about the field activities?

A. I have been on every plantation in the Territory, I think, except Gay and Robinson and the Waimea Sugar Mill Company, which are two small unorganized companies without mills on the Island of Kauai.

Q. Have you done any reading to supplement your own personal experiences, reading of official or expert printed material dealing with the sugar industry or various aspects of it in this Territory?

A. As much as I could obtain.

Q. Can you recall any of the specific documents or [288] bulletins or books that you have read and absorbed from?

A. Well, I am familiar with the Department of Labor surveys over the years. I have read some of the sugar industry's own literature, including their sugar manual. I have read some material on sugar industry in other areas.

Q. Have you read this document that I referred to this morning, Bulletin 687, entitled "Labor in the Territory of Hawaii?"

A. I have.

(Testimony of Jack W. Hall.)

Q. And particularly the portions that had to deal with the sugar industry, is that right?

A. That's correct.

Q. Now, Mr. Hall, at my request you took a copy of the complaint in this case, did you not, and went through the job description of each of the types of employees whose activities are described in the complaint, isn't that right?

A. I did.

Q. And did you make some notes on the copy that I handed you for that purpose?

A. I did.

Q. Would it assist you in the testimony that I am about to ask you to give with respect to those employees—if you had the copy that you were working on?

A. Very much so. Those descriptions are somewhat in detail. [289]

Mr. Poole: No objection.

(Mr. Gladstein hands a document to the witness.)

Q. Now, I will ask you to turn to page 31 of the complaint in this case. On that page you will observe that there commences the description of the first of the groups of job types or job classification descriptions. Paragraph 38, referring to Ciraco Maneja, who was entitled "Ratooning Tractor Operator," would you go through the description of the duties of that job and indicate what connection, if any, those duties or any part of them have with agricultural work or farming?

A. The first statement as to his duties says that he operates a tractor for the purpose of preparing

(Testimony of Jack W. Hall.)

a ratoon cane field. That is purely an agricultural operation. Next, he makes minor repairs—

Mr. Poole: Your Honor, I want to object to the character of this testimony. I want to be heard on it fully, and I think that now is the time I should like the Court to hear me.

The Court: I'd say that this is the time to be heard on your objection. [290]

Mr. Poole at this point objected to the testimony sought to be adduced from Mr. Hall as to what activities constitute "agriculture" within the definition of that term contained in the Fair Labor Standards Act. The basis of the objection was that such testimony is incompetent because the Act contains a specific definition of the term "agriculture" and therefore whether particular activities constitute "agriculture" depends upon whether they come within the term as defined in the statute and not upon any witness's views as to what are "agriculture" within such definition.

Defendants' attorney, Mr. Gladstein, argued that the testimony of Mr. Hall was not being offered for the purpose of showing what activities of the defendants are "agriculture" but rather for the purpose of setting forth the claims or position of the defendant.

The Court ruled that the testimony of Mr. Hall should be confined to a description of the details of the various operations performed by the defendants. By Mr. Gladstein:

Q. Now, Mr. Hall, turning to the duties set forth

(Testimony of Jack W. Hall.)

in paragraph 38 of the employee Ciraco Maneja, will you refer to the particular duties set forth there in respect of which it is our claim that they are not exempt, and discuss those duties?

A. First of all, for the purpose of clarifying this description, it should be noted that the stipulation provides that during certain times throughout the year this employee works in the tractor shop as a mechanic's helper in repairing tractors. The term "tractor" by itself is somewhat misleading because tractors are used both for the purpose of preparing the soil but they are also used for the purpose of making roads; they are also used for the purpose of preparing a way for laying down portable track; they are also used for the purpose of hauling cane cars out of fields, which would be a part of the transportation operation under our position in this proceeding. And in work weeks when this individual would be working on tractors used for that purpose, he would not be engaged in doing [310] any work in connection with the soil as such.

Q. What about the cutting of firewood, tell us about that? What does it consist of? Where does it go?

A. Well, the firewood is used to supply community bath houses, and the individual employees in the housing areas, housing areas of course that don't have anything to do with the preparation of the soil or with the harvesting of crops.

Q. Or with the processing of sugar, do you know?

A. That's correct.

(Testimony of Jack W. Hall.)

Q. What work is involved in the hauling of stones from the plantation fields on this sled in order to clear the fields? Will you describe that in somewhat more detail?

A. Well, the usual practice is to place the stones upon a sled which has a bridle on it which is attached to the tractors and they haul to the edge of the field or to some place where they want to pile the stones away from the fields. Sometimes they use in effect a rake approach to get the rocks out. I have seen tractors bulldoze rocks out of the field.

Q. Do you have anything further to add with respect to the work or activity of that employee?

A. I think not.

Q. Will you take the next in line, under 39, called a plowing employee, and give us information similar to that [311] which you have already given concerning the employee described in 38?

A. I think the same general information applies likewise to this employee. It is interesting to note that the word "field operations" in the fifth line isn't described. That could well be preparing the ground for laying portable track, which again is not actually the preparation of the soil or tilling or harvesting.

Q. In other words, that would be an operation on land from which no sugar crop, sugar cane crop, is to be produced, is that right?

A. Well, it might be over an area where sugar cane has been growing. It might run, make a road-way into a field, level the ground on which to lay

(Testimony of Jack W. Hall.)

portable track and to bring the cane out of the fields.

Q. Now, would your testimony concerning this employee, insofar as he works as a mechanic's helper in repairing tractors of various kinds, be the same, substantially the same as you have given the previous employee?

A. That's correct.

Q. Now let's turn to the employee described, whose duties are described in No. 40. Will you testify concerning him?

A. The same thing is true as to this employee and the repair work he performs in the tractor shop. He may well [312] be performing repair work on equipment that is not used for planting, cultivation or harvesting.

Q. Will you discuss, Mr. Hall, that part of this employee's duties which involve operation of machines for pipe lines and drainage ditches for domestic pipe lines?

A. I would think the description is almost obvious. In operating the trench-digging machine for pipe line that supplies water for domestic purposes, he certainly isn't performing a function that has anything to do with the field operations.

Q. Have you concluded with No. 40?

A. I have.

Q. Will you turn to No. 41, then?

A. This employee, of course, in driving a truck does not actually come in contact with any of the cultivation or with the preparation or the actual

(Testimony of Jack W. Hall.)

harvesting of cane. His is a job of transportation.

Q. He is a teamster, in other words?

A. That's correct.

Q. He also works as a mechanic, does he, in the garage and elsewhere?

A. That's correct. On the same general situation as outlined in the 38, 39 and 40, it applies insofar as the garage work is concerned. [313]

Q. That is, his work is on all sorts of vehicles and equipment, much of which has nothing to do with actual production of sugar cane, is that your testimony? A. That's correct.

Q. Will you turn to No. 42 now and testify?

A. There is nothing in this description to indicate whether or not any of the water in the irrigation ditches is eventually used in the mill operations or in the boilers. If it were, it would not be agricultural—

Mr. Poole: I object to that answer. I think it leads to a legal conclusion. He has no right to state it.

The Court: Sustained.

Mr. Gladstein: Will you continue with your statement, Mr. Hall?

Mr. Poole: Your Honor, I want to make an observation, if I may. While counsel for defendants qualified or purported to qualify, I should say, this witness as being familiar with the over-all operations of the sugar plantations in the Territory of Hawaii, he did not qualify him as being familiar with the particular operations on the plantation of

(Testimony of Jack W. Hall.)

Waialua Agricultural Company, which are involved here. In fact, when you asked the witness as to whether or not he was familiar with the milling operations, he hesitated and said that he thought he had been in part of the mill once. Again when you asked him as to whether or not he was familiar with [314] the field operations, he said that he was familiar generally with all field operations but he didn't say that he was familiar with the field operations on Waialua.

Now you are asking the questions here that go to the specific duties of the named defendant employees, and I might say I am frankly unable to determine from the answers being given here as to whether or not the witness is testifying with respect to the particular defendants that are involved in this case or whether he is testifying generally as to what the job generally involves.

Mr. Gladstein: Well, let me ask one or two questions of Mr. Hall.

Q. Mr. Hall, in going through the descriptions, the job descriptions of this complaint, did you find that you were familiar with the types of duties and activities, familiar from a personal observation and experience with the types of activities described in this complaint?

A. That is true. I also found that in some respects the descriptions are not complete enough, and therefore somewhat misleading.

Q. Did you find, Mr. Hall, in your experience

(Testimony of Jack W. Hall.)

that these duties as described here are generally and substantially characteristic of or descriptive of similar duties or exact and identical duties and functions of activities of workers on various plantations in this area? [315]

A. That is the pattern throughout the industry. Whenever an operation becomes efficient on one plantation, it is quickly adopted on others.

Q. Has it been your experience, do you know, can you state, based on your own personal knowledge, of experience, whether or not there is any substantial departure from one plantation to another in respect of the types of functions, activities and job descriptions that we have described in this complaint?

A. Not substantially.

Q. Have you ever had it raised by any representative of Waialua or H.S.P.A. or any of the factors that the manner of operation in Waialua or the duties of the workers at Waialua are substantially different from the manner of operations elsewhere among the plantations, or the duties of the workers elsewhere?

A. No. As a matter of fact, it has been urged that it was typical.

Mr. Poole: Well, your Honor, the whole course of this examination, as I understand it, constitutes an admission that the witness here is not personally familiar with the activities of these particular defendants regarding whom he is giving testimony.

Mr. Gladstein: To the contrary, this is to establish that Mr. Hall's familiarity with the industry

(Testimony of Jack W. Hall.)

includes the [316] Waialua Agricultural Company, which is presented here as a more or less typical operation, and Mr. Hall is familiar thoroughly with these operations and his testimony has already been given as to how he gained that familiarity. I don't understand it, unless Mr. Poole is making a statement here—I haven't heard him make it—I don't understand that it is claimed that Waialua is unique and so different from other operations in this industry that only somebody who has been working at Waialua is qualified to testify on these matters. I don't understand him to say that. But if he is going to say that, why that would be very unusual and—not unusual but would frustrate the very purpose of bringing this case.

It isn't our purpose in this declaratory relief case to just get a determination for Waialua. That wouldn't solve anything. You'd have 30 odd other plantations that would still not have any authoritative statement as to where coverage lies and where it ends. The purpose of this proceeding was to get, first of all, a plantation which was sufficiently and substantially typical and representative, so that the decision in that case would apply to the rest of the industry. And that's why Waialua was picked out. And what aspect of its operation was supposed to be typical? Why the very things described here, your Honor, the duties of the men. [317]

Now, if the Court were to decide the issues here on the basis, for example, of a job title, I would certainly go along. The job title is different from plantation to plantation, and even different within

(Testimony of Jack W. Hall.)

a plantation from time to time. And there is nothing more deceiving than simply a title of something. It is the content or substance of the job, it is the particular duty or combination of duties that we are concerned with. That duty is to be found not only performed at Waialua but every place.

We, for example, we have presented here a statement that Mr. Augustine Lorenzo in performing his work does certain things. That is not typical or unique—somebody, not with his name, it is true, somebody on every other plantation does the same kind of work, either identical or substantially the same. He may not do the same combination of things, that is true. That's why we are not concerned with titles. We are concerned with the particular activity. And the activities of Waialua are the same activities that are to be found in the other plantations.

Therefore, Mr. Hall is eminently qualified to testify about these matters. And while I don't object to the ruling of the Court as to the last sentence of the last answer given by Mr. Hall, in which he said something was or was not agricultural, as to the rest he is giving testimony concerning facts, and I think he should be allowed to proceed, [318] your Honor.

The Court: Well, it doesn't seem to me to make any difference whether John Doe or Richard Roe or some other person performs any one of these operations that are specified and accredited before

(Testimony of Jack W. Hall.)

us. And also it seems to me that when it is said that an employee makes minor repairs on a 65-horsepower diesel tractor in the field and then at other times assists in the repair shop in making further and more substantial repairs, it wouldn't seem to me to make any difference whether that was on Waialua or whether it was on Ewa or Waipahu or on some other island. Wouldn't the operation that is described here be just about the same thing, as nearly as you could write it anywhere?

Mr. Poole: I am certainly unwilling to say yes to that. I know what the operations are, as the attorney who assisted in the preparation of this stipulation, out at Waialua. And I am not arguing here, your Honor, that if the operation that you have just described was performed out at Oahu or at Ewa, that it would make any legal difference. I mean the situation with respect to coverage under the Fair Labor Standards Act. Obviously, it would be the same. But what I am saying is this: We had 47 named defendants; you are going to have to determine whether the combination of duties performed by each one of these 47 individually named defendants are under the Fair Labor Standards Act. That is [319] the job which you have before you.

Now, it seems to me that any evidence that has to do with what each one of these defendants do is material. I would also say that any evidence that indicated the nature of one of these listed activities would be admissible, so that your Honor would be in a better position to understand. But I don't

(Testimony of Jack W. Hall.)

think that evidence that goes to so-called general character of a particular occupation which exists on all plantations or many plantations is at all relevant. In fact, you can't approach the job that you have here in that manner. It may be that one particular activity might defeat an exemption, and it is the combination of activities that in the last analysis is going to determine whether or not a particular exemption applies or does not apply. So those are the facts that you are going to have to get in the record.

The Court: Then from that statement it rather impressed me at first blush that that would put the burden on the complainant to show in detail that the operations were in toto such as would create the exemption. Now, the operations are defined here with just certain words and sentences. For instance, during the off season and at times throughout the year he cuts firewood for use as fuel by plantation employees living in the plantation villages, hauls stones from the plantation fields on sleds, and assists [320] as a mechanic's helper in the tractor repair shop in repairing tractors. Well, now, there is quite a lot of stuff covered there. Of course, I can readily conceive that the operation of cutting firewood might be entirely different on one plantation from another if they did cut firewood on all of them. And on some of them I don't believe they do. The operation of cutting firewood as assigned to each individual who went out to cut firewood might be entirely different. But if we have got to take these things by the manner in which they are

(Testimony of Jack W. Hall.)

described, why it seems to me that to tell what generally that operation would be and what would be involved in it, it would seem pertinent.

Mr. Poole: I don't think so, your Honor. Just look at what is going to happen to your record if you do that. Here is this first described job. He is a ratoon tractor operator. You have certain listed activities here that that particular operator is engaged in. Now, if you are going to permit evidence to be put in as to what the ratooning tractor operator normally does or generally does on all plantations, you are going to get a different category of work.

The Court: I rather took it, to start off, that it was or would be conceded that all operations of that particular nature, like ratooning tractor or cultivator operator in terms of the description applied particularly to cultivating [321] or planting operations, that that was conceded to be agriculture. But it is these other things that do or may bother me considerably in determining how they apply.

Mr. Poole: Well, you are correct in that. But I don't think you are correct in saying that you can pass upon these particular jobs here and determine whether they are under the Fair Labor Standards Act, or are not subject to exemption, by taking evidence generally as to what a particular job, a particular type of activity normally involves on each plantation or on all plantations generally. Now just take, for instance, the activity of transportation, cane transportation. I am talking outside of the

(Testimony of Jack W. Hall.)

record here. These facts are not in the stipulation here. You have cane being transported by flume; you have cane being transported from the field to the mill by train; you have it being transported by truck; and in some cases you have—

The Court: By cable.

Mr. Poole: —and in some cases by a combination of those methods. Now, out at Waialua we have only one method involved: transportation by train. Now, I am not arguing that if the Court holds that the transportation of cane by train is subject to the law, is not within the exemption, that any different ruling should be made for other types of transportation. I don't think that we would take that position. I'd be willing now to concede that if cane [322] transportation as a function or activity is held to be covered by the Act and not entitled to any exemption, that it ought to be treated uniformly as under the law. But it seems to me that it goes far afield, your Honor, when we get into the job description of the particular employee who, we will say, is engaged, as some are in this case, in transporting cane by train, working as engineers, as brakemen, and so forth, to bring in testimony with respect to all other types of transportation and what is the general custom on other plantations. I regard that as highly irrelevant. It has nothing to do with this particular case.

You must look, it seems to me, to the activities of these particular employees and on that basis determine whether the exemption applies.

(Testimony of Jack W. Hall.)

Now, in your comment before you said that certainly the Plaintiff must have the burden of proof because we were asserting that the agricultural exemption applies. I acknowledged that. The cases so hold. We do have the burden of proof. But we have submitted in this case a stipulation which was signed by counsel for the Defendants, and we think that that adequately describes the jobs for the purpose of performing the judicial function, that is, of determining whether or not the agricultural or the 7(c) processing exemption applies, or in the housing situation for the purpose of determining whether you have coverage or no [323] coverage. If they are not adequately described, I have no objection to going into further evidence as to what those particular employees are doing. But we certainly are not proceeding in the manner contemplated by the statute in any case I was ever in, when we bring evidence in here as to what was generally done by Joe Doaks over on some other plantation which is not a party, either Defendant or Plaintiff in this case.

The Court: Well, now, you set out here, both in the complaint and then it is legally reiterated in the stipulation, that these 30 odd workmen named perform certain duties, and some of them are more or less involved. And the question very clearly has been raised that the description isn't complete in some instances, to say that a man repairs the tractors in the field and then in the shop.

Mr. Poole: Yes.

(Testimony of Jack W. Hall.)

The Court: Well, it is material, I believe, to know what those tractors are used for, what caused the damage to them that would require repairs.

Mr. Poole: I agree with your Honor.

The Court: So that when you leave your case here just on the statement that a man performs these particular duties, why it is fair for the Defendant to go forward and bring in any other facts that are related to the duties that might put them in a different classification under this Act that [324] we are dealing with. Now, I don't know—

Mr. Poole: I have no objection to that, if that is what they are willing to do, but they are not doing it.

Mr. Gladstein: I even think, your Honor, that not only will we be entitled to have testimony as to additional facts concerning the job duties of the people in this case, or amplification, explaining, necessarily even adding a discussion of the duties by simply amplifying the nature of the duties involved here, but I think we also have the right to bring in testimony with respect to a similar activity on some other of the plantations in order to give the Court an opportunity to focus this, to place this particular man's work or the particular type of his work that we are talking about in focus, so that we will understand the function of that work to the whole. For example, as Mr. Poole said, transportation in some plantations, mainly the big island I understand, is a matter of using flumes. In other places they use trucks. In some places they use

(Testimony of Jack W. Hall.)

railroads or combinations, and so forth. Your Honor has mentioned a fourth one.

Now, it seems to me to be improper to say that this Court does not have the right to hear evidence that will show the relationship of a particular activity to the entire operation. Of necessity your Honor has a right to call upon evidence as to what happens in similar or related industries [325] in order to throw light upon the relationship of a particular man's activities. And there is plenty of law to support that.

Now, one more thing. In signing the stipulation with Mr. Poole here, I signed a stipulation for the purpose of shortening the case, signed a stipulation which constitutes a minimum agreement of fact. I didn't ask him to agree to other statements of fact. Either he would not agree to them or I didn't prefer to ask him to. But I am not obviously bound to confine myself to that which we stipulated. I can go beyond that. The agreement that we made originally, the original settlement, didn't pick out Waialua as the particular Company, didn't say we would test the question of coverage at one particular plantation. That agreement is in general terms. I don't happen to have a copy of it here but I will bring it to court. I asked counsel and counsel said he didn't have a copy of it. But that agreement contemplates a test case for the industry, not for Waialua as such.

Therefore that's another reason why your Honor would have the right to hear this evidence. And I

(Testimony of Jack W. Hall.)

think we would save time if we didn't worry about the fact that Mr. Hall, being a layman, might occasionally say, well, this isn't agricultural. I think we all understand that that kind of a statement isn't going to be binding on this Court or on [326] any appellate court. And since it can't possibly mislead a jury, I think we would save time if we didn't worry about the fact that some such statement may creep into the record. It is not going to prevent this Court from making up its own mind on the law.

The Court: Well, let us go ahead with the examination. I don't mean by that to suggest that you limit your objections on the striking of any statement made by the witness that you do object to.

Mr. Poole: Well, if the Court please, I'd like to have the reporter note that I take an objection to all this testimony. I don't regard it as proper because the witness hasn't properly qualified himself to testify in respect to the operations at Waialua, and he is not confining his testimony to the description of the named Defendants. Therefore, I object to what he is saying.

The Court: Well, the witness is referring to the statement as to the work performed by a particular defendant, so far as we go along, and telling his views as to what is involved in these work transactions. The objection is overruled.

By Mr. Gladstein:

Q. Will you turn to No. 42, Mr. Hall, and testify concerning the activity of that employee?

(Testimony of Jack W. Hall.)

The Court: Thirty what?

Mr. Gladstein: Forty-two, paragraph 42 on page 33. [327]

A. I must confess, your Honor, that this legal argument leaves me a little cold. I am trying to indicate in these job descriptions where they are incomplete and where they are misleading. And in the case of No. 42, Augustine Lorenzo, the description indicates that all of the water is used exclusively for irrigation purposes. Employees similarly situated on many of the plantations are handling water that is also used for mill purposes.

Mr. Poole: Your Honor, I ask that that statement be stricken. We have a stipulation here to a fact; that he says that that fact is not in accordance with the facts on the other plantations. That is completely irrelevant.

Mr. Gladstein: I don't understand. He said that there was a statement. Which statement here, Mr. Hall, did you think indicated that the water that this man has to perform some work in connection with is used solely for agriculture?

The Witness: Well, in the first sentence it indicates that he receives, transmits orders for the amount of irrigation water to be received to the plantation each work week period from the reservoir. And further, he is responsible for the proper maintenance of the irrigation canal system under his charge.

Q. Well, let's see if I understand your testi-

(Testimony of Jack W. Hall.)

mony. Is it this, Mr. Hall, that this employee may well from this description—it's given here—spend energy and devote time [328] and perform work in connection with water that is used for purposes other than irrigation of the fields?

A. That is what I am trying to say. It's rather difficult.

Q. What other purpose, for example?

A. Some of it might be used in mill operations. Some of it might be used in washing cane in mills.

Q. Would any of it be used for domestic purposes?

A. In many cases, yes. Water is taken directly from irrigation ditches for domestic purposes.

Mr. Gladstein: Now, it would be our position, your Honor, with respect to work that relates to water used for purposes other than agricultural purposes, such as irrigation described in paragraph 42, that such work would not be exempt.

Q. Now, would that testimony you have given Mr. Hall, be equally true of water measurement status?

A. I didn't hear the question.

Q. That is, checking water measurement status.

A. That is true, so long as part of the water is going towards an irrigation——

The Court: Now, you see the difference here. Mr. Hall construes this as being an allegation that this employee operates the water system or part of it for irrigation purposes only. Well, now, he raises a conjecture that some [329] of that might

(Testimony of Jack W. Hall.)

be used for other purposes. Well, that isn't in the nature of any proof. It is just a supposition that in the ordinary course might be had. I can't consider that sort of a thing. If it is known, that it is possible that this defendant here who is named, that we are dealing with, that he might be able to testify of his knowledge that some of that water goes to irrigation, irrigating other crops, or outside or into the mill for certain purposes there which you claim is not agriculture nor processing, but this witness can't testify to that nor give the Court any legal evidence.

Mr. Gladstein: Your Honor, I think that he has given all that your Honor needs. In other words, if our interpretation of the law is accurate, then this particular employee that we are talking about, not as an employee but insofar as specified duties are concerned, the Court might well say those are exempt duties, provided when we are dealing with water the water is used for irrigation purposes, period. Mr. Hall pointed out not necessarily that this employee works in respect to water that goes for other purposes but he pointed out that that does have it. Therefore, all that we need in terms of a declaratory relief judgment is for the Court to say, based on the evidence, if such an employee, any employee who is doing this kind of work performs activities in respect of water which is used [330] for purposes other than this, for example, A. B and C, then such employee is not exempt.

(Testimony of Jack W. Hall.)

The Court: That is not the issue here. You make the allegation that this water that this employee deals with is used for irrigation purposes. Now, that stands until it is overthrown.

Mr. Poole: Your Honor, he has attempted to get an adjudication on a hypothetical set of facts which the courts have never permitted. Now, he has everything he wants, as I understand him. If he gets an adjudication on the job descriptions that we have in the stipulation, because there is nothing said in the description about water going for any other purposes than for irrigation—that being true, if the Court holds that that particular job is agricultural, necessarily it is on the basis that the water was being handled by that man, being gauged by that man, was being used for irrigation purposes, and you have what you want. But this idea of putting conjecture upon conjecture as to what possibly the job might be involved in, it seems to me is entirely improper. I have never seen any rulings of the courts that permitted it. It is asking for an adjudication upon a hypothetical set of facts. And that isn't even permitted under the declaratory judgment act.

Mr. Gladstein: I can't see what all this argument is about, Judge. Mr. Hall has testified to a fact which is [331] that the men do this kind of work, do perform work in connection with water that is used for purposes other than irrigation purposes. Now, maybe Augustine Lorenzo during the

(Testimony of Jack W. Hall.)

last year falls in one category and maybe the year before that in another, and it may change from time to time. I can't see that there is anything hypothetical about what we ask. But if what Mr. Poole is suggesting is something like this, maybe we don't have any disagreement: If he is stating that a finding in favor of exemption on the part of Mr. Lorenzo would be based upon the fact that the water is used for irrigation purposes only, and that the Court by thereby granting an exemption would not be supporting an exemption for work in connection with water, the use of which goes beyond irrigation, perhaps we can stipulate and pass on. Is that all right?

Mr. Poole: I am willing to agree that the Court in passing upon the description here doesn't by implication hold that those particular jobs are either covered by the Act or entitled to an exemption, if the activities are absolutely different. I think that the decision rests wholly upon the facts as stated in the stipulation. And I am willing, Mr. Gladstein, to stipulate to this fact, that in so far as the decision of this Court is concerned, and as based upon the stipulation which counsel for the parties have signed, that it necessarily doesn't go beyond the facts [332] that we have agreed upon. And that includes this job that is now under discussion, as the others.

Mr. Gladstein: Well, we were talking about this particular job and I thought perhaps we could get

(Testimony of Jack W. Hall.)

a specific stipulation, because our position on this man, your Honor, is this: We think that the description of the duties in paragraph 42 are agricultural except insofar as the man may spend time performing work in connection with water, any part of which is used for purposes other than irrigation. Now, I will offer a stipulation with Mr. Poole on that, if he wants to enter into it. We can pass by No. 42.

Mr. Poole: No, I will not stipulate on that particular point because I am not familiar with the disposition of the water.

The Court: He sends water out into what?

Mr. Poole: What is described as "in proper proportion to the various delivery ditches on the plantation." Well, that might mean a great many things. I can't tell. Your Honor, I am willing to put a witness on at the conclusion of the testimony that is being taken or offered now by the defendant and supplement any particular job here that you feel is inadequately described. And I certainly will do so on this particular job.

The Court: All right. [333]

By Mr. Gladstein:

Q. Let's turn to No. 43, Mr. Hall. You have it, concerning the duties and activities set forth there?

A. This job is a steam pump operator, is a relatively highly-skilled job requiring a great deal of training and experience, and as far from having any direct connection with the cultivation and harvesting of sugar cane—

(Testimony of Jack W. Hall.)

Q. Where is the work performed?

A. In a building that houses the pump.

Q. Can you describe generally what this apparatus is that this man works, what his duties are?

A. Well, that's a boiler, of course, with a fire box under it for heating the water to steam. The steam in turn turns a pump, pumping the water.

Q. To what parts of the plantation do the consequences of this man's work go to? Well, I'll withdraw it.

Mr. Poole: You withdraw the question?

Mr. Gladstein: Yes, I withdraw the question.

Q. Is there anything else you want to add to 43, Mr. Hall? A. No, I don't think so.

Q. Turn to No. 44, please.

A. I think that description is adequate. It expressly points out that he is doing other work than making fire bricks and fighting fires and pushing cane into where the [334] regular cane loading machine can pick it up. That is, of course, he bulldozes track lines for the laying of portable tracks. I have no comment on that.

Q. Now, what about the work that he performs when he is hauling cane over tracks, will you tell us about that, and particularly how?

A. Well, in that connection it is much the same as the locomotive engineer's job. It so happens that in laying portable track the track isn't stable enough to run a heavy locomotive out there, so it is necessary to hook a tractor to haul the cane cars

(Testimony of Jack W. Hall.)

into the main line where the locomotive picks it up and takes it into the mill.

Q. Now, the hauling of this cane occurs after it has been picked up at various parts and points in the field, is that right?

A. That's right. It's at a central point and it is picked up with a cane loader and loaded into the cane cars.

Q. So that the work that this man performs when he is hauling cane over portable tracks occurs after the cane has been placed in a central point of concentration, is that right?

A. That's correct.

Mr. Poole: Your Honor, the testimony that has just been given is in the nature of a legal conclusion. He said that the cane was picked up after it was placed in a central [335] point of concentration.

Mr. Gladstein: Well, you want to describe the point of concentration?

Q. Will you do that, Mr. Hall? Describe what you meant by central point of concentration or point of concentration.

A. Well, that's where the cane loader picks up the cane to put it in the cane car to bring it into the mill.

Q. What methods are used, are known to be used in this industry?

A. Well, there's various methods. Generally, the procedure is to have a cane loader pick up the

(Testimony of Jack W. Hall.)

load and place it in the car. On other places in the industry the cane may be——

Mr. Poole: I object, your Honor, what the practices are, to testify as to the rest of the industry.

The Court: Well, how does it get into piles ready for the cane loader to take it?

Mr. Poole: Your Honor, I should like to comment upon that. This testimony that is now being given is contradicting some of the basic things that are set forth in the stipulation.

Mr. Gladstein: Where?

Mr. Poole: It is basic, as you know, that a party is not permitted to contradict or impeach his own witness. [336] And I take it that that same rule applies where the parties had entered into a stipulation. Now, the stipulation——

Mr. Gladstein: Why?

Mr. Poole: Just a moment, Mr. Gladstein. This stipulation shows very clearly that in this particular operation, unlike many others I am sure with which Mr. Hall is familiar, the cane is pulled out of the ground as it were by a large grab that operates on a crane and is placed directly into the cars.

The Court: Does the stipulation set that out?

The Witness: That isn't always true. The stipulation says so.

Mr. Poole: In some situations there is some cane that is bulldozed. And that is for the purpose of making a roadway for the portable track. But the great bulk of it is loaded directly into cane cars

(Testimony of Jack W. Hall.)

by cranes which pick it up in its standing position. That is set forth in the stipulation under the provisions that have to do with harvesting.

Mr. Gladstein: Well, the fact that they use both methods, your Honor, doesn't mean that Mr. Hall's testimony——

Mr. Poole: Well, Mr. Hall is testifying entirely, to an entirely different thing, and he is tending to discredit the stipulation.

Mr. Gladstein: We are not trying to discredit the [337] stipulation but adding to it and explaining.

The Court: Well, that is set out in the stipulation in paragraph number what?

Mr. Poole: It is on page 21, your Honor.

The Court: Of the stipulation?

Mr. Poole: Yes.

The Court: No, no, I mean the duties of this man.

The Witness: Forty-four.

The Court: Forty-four? Forty-four is a steam pump operator under the stipulation. They are not the same numbers in the complaint and the stipulation. I think they vary.

Mr. Poole: They vary by one number.

The Court: What is the name?

The Witness: Tadao Watanabe.

The Court: Oh, yes, 45, listed as a rake operator.

(Testimony of Jack W. Hall.)

Mr. Poole: Your Honor, do you have the stipulation before you?

The Court: Yes.

Mr. Poole: I should like to call your attention to the paragraph that starts at the bottom of page 80 and continues through.

The Court: Page what?

Mr. Poole: Page 80 and continues through to the top of page 81. Now, it is stated in that stipulation that [338] "the work and duties of each such person are to be considered as further described by Part I of this stipulation to the extent that Part I is related and applicable to the particular work and duties described for such person in Part II."

In other words, the general part of the stipulation has to be read in connection with the activities of each of the individually-named defendants. So when you have a job description that relates to cane harvesting or cane loading or cane transporting, that in turn has to be read back in connection with the over-all and general description of the operation on the plantation.

Mr. Gladstein: I confess I don't understand why Mr. Poole is so excited. I just want to have Mr. Hall testify to the fact and let the Court pass on the application of the law and the facts. If there are, as there are apparently, two methods of getting the cane into cars, one by grab system and the other even to a lesser extent at Waialua—it doesn't matter—and the other by piling it in piles

(Testimony of Jack W. Hall.)

and having those piles lifted or pushed onto and into the cars, let us have the facts and the Court can pass on the facts.

Mr. Poole: I have no objection to that, your Honor.

Mr. Gladstein: That's all we are trying to do.

Mr. Poole: But the testimony was clearly to the effect that the cane was placed in some concentrated form, as [339] your Honor's question indicated, and that isn't a fact. It is loaded.

The Court: Well, it says that this cane is bulldozed into piles so that it is available for regular cane-loading machines. That would indicate to my mind that it was concentrated at some point.

Mr. Poole: Well, that's only the cane that is under the telephone lines, as indicated.

The Court: Yes.

Mr. Poole: On Page 21 it states as follows:

"The cane is loaded on the cars by caneloading machines. These machines are caterpillar cranes weighing approximately 23 tons equipped with a 40-foot boom and a finger-like grab which pulls or grabs the cane loose from its growing position and loads it directly into rail cars."

The Court: But that has nothing to do with this man's duties.

Mr. Poole: That's right.

The Court: He commences where that ends.
By Mr. Gladstein:

Q. Will you continue, Mr. Hall?

A. I think that completes employee No. 44 here.

(Testimony of Jack W. Hall.)

Q. Well, I had asked you about the placing of cane in piles, to describe that operation if you would.

A. Well, I think the stipulation is clear enough, [340] that it is pushed by this, that it is pushed by this, pulled by this rake operation into piles and then picked up by the cane loader and placed in the cane car.

Q. At some subsequent point, is that right?

A. That's right.

Q. Now, will you turn to employee No. 45 and testify concerning his activities?

Mr. Gladstein: Your Honor, I am purposely not asking Mr. Hall to discuss some of the activities of employee No. 44, such as cutting firewood and other things which are similar to or the same as duties of employees that he has already testified about.

The Court: I think that can be understood, that where a particular operation is gone into in the case of one employee, if the identical thing is mentioned as to another that we can assume that it was the same operation.

Mr. Poole: I would agree that the agricultural character of it or the 7(c) processing character of it would be the same.

Mr. Gladstein: Or the non-7(c) and non-13(a) (6) would be the same.

Q. All right, Mr. Hall, will you turn to No. 45 please?

A. I think in No. 45 it is clear that the employee operating a portable track plow, which seems to be

(Testimony of Jack W. Hall.)

an [341] agricultural implement, is not performing any functions that have to do with preparation of the soil, planting, cultivating or harvesting of the cane, and it is similar to the job described earlier.

Q. That we called transportation, is that right?

A. That's correct.

Q. What about No. 46?

A. This operation consists of operating a boom tractor that picks the portable track up from usually a railroad car that's been run out to the end of the line and picking that track up and laying it on the field so that it can be fastened together by the portable track crew for the cane cars to follow into the field, and in picking tracks up after the field has been harvested and placing them back on the conveyance that brought the track out.

Q. Is it similar to the work of a section hand of a railroad company?

A. Well, I haven't seen any of those operations but I would assume from what I have read that it is a similar operation.

Q. This man himself, who does not directly perform any work or use any tools in the performance of work that runs anywhere between tilling the soil and harvesting the crop—

Mr. Poole: I object to that question. This is a [342] leading question. This is your witness.
By Mr. Gladstein:

Q. Well, I will ask you if that is a correct statement?

A. It is.

(Testimony of Jack W. Hall.)

Q. Well, now, will you turn to No. 47. I'll try not to be leading but sometimes it shortens the case.

A. In 47, as indicated earlier in the stipulation the cane-loading machine at Waialua is a grab apparatus and it breaks off the cane and loads directly into the cane cars except where it is picking up the cane as it's been piled by the rake from out of the way places, out of the way corners and things of that kind. There is one more item here. During the off season in the cleaning of, in operating the shovel machine to clean reservoirs and various irrigation and drainage ditches, I'd like to point out that reservoirs are also used for domestic purposes, and the stipulation does not show whether these reservoirs contain water used exclusively for irrigating cane.

Mr. Gladstein: I might say on this employee, your Honor, that we ourselves have had considerable problem, and this is it. They have apparently integrated or combined two tasks with respect to the cane loading machine operator at Waialua. One of these tasks is usually the end of the harvesting. The other is usually the beginning [343] of a transportation set-up or activity. And here what they have done is to combine the two and complete the last act of harvesting and the first act of transportation into one. Now, that raises a question in our mind of coverage. We feel that to the extent that transportation is not a part, not a part of agriculture, and there is a decision that transportation to the mill is incidental to the mill activities rather

(Testimony of Jack W. Hall.)

than incidental to the field or agricultural activity, —I'll have occasion to refer to that in briefs—to that extent this man is apparently performing a combination of tasks, one exempt as agriculture and the other not exempt as agricultural. And therefore, I make that point that we would claim under our theory that this man is not exempt by reason of the fact that he performs certain work which is not exempt, although in that very same activity he is performing work which otherwise under a different set of circumstances might be regarded as exempt, as agriculture. And that, of course, applies to all of the work that he does.

The Court: Several others that would come under your claim of that same thing?

Mr. Gladstein: Yes, that's correct, your Honor. In other words, whenever this happens, whenever this activity happens this way.

Q. Now, you want to turn to No. 48, Mr. Hall?

Mr. Poole: Your Honor, I should like to ask counsel whether I correctly understood him to say that the loading activity was an activity which under his claim was not agricultural?

Mr. Gladstein: The loading into cars that are taking the cane to the mill is transportation.

Mr. Poole: Is transportation? I just wanted to get that clear.

By Mr. Gladstein:

Q. Will you refer to No. 48, Mr. Hall please?

A. No. 48, the operation here is almost exclu-

(Testimony of Jack W. Hall.)

sively the same operation described for some of the other employees that were doing it incidentally, that is, hauling empty cane cars into the field and pulling cane cars off the field, and I don't think it's necessary to go into that any more.

Q. It is part of the transportation?

A. That is right.

Q. There is one activity which is direct field work by this man, that is, weeding or cultivating. You notice that?

A. Yes, that's true.

Mr. Gladstein: Our position would be that the weeding and cultivating, of course, is agriculture but the rest of it is not. [345]

Q. No. 49, Mr. Hall?

A. There again the employe is engaged in not preparation of the soil or in planting or in cultivation or harvesting but almost exclusively in grading roads in the field and in the village. He also spends time, of course, in, exclusively in some work weeks, according to the description, in preventing the run-off of irrigation water, and that has to do with the cultivation and irrigating process.

Q. That is, if the water is used solely for that purpose?

A. That's what the stipulation says.

Q. What about No. 50?

A. That's straight transportation except when he is making repairs.

Q. And when he is making repairs that would be

(Testimony of Jack W. Hall.)

connected with the instrumentality of transportation, namely, road work?

A. Equipment used in transportation.

Q. Fifty-one—by the way, let me ask you about No. 50, whether you can tell us if his duties are all performed in that transportation stage that occurs between the harvesting and the processing in the mill, or whether it also is performed in part on that transportation stage that commences after the sugar is coming out of the machines and [346] mill?

A. Well, he does not only that but he also hauls supplies into the plantations.

Q. So that he works in both transportation setups or stages, is that right?

A. That's correct.

Q. Now, what about No. 51?

A. This employee is engaged exclusively on work in connection with the transportation system, that is, on the track system.

Q. He is the railroad section hand I was referring to awhile ago, is that what he is called?

A. That's what they call him.

Q. Now, what about No. 52?

A. Flagman work also has to do with the protection of the general public, to make sure that they don't get in the way of moving transportation, although that seems to happen on occasions. And it is not doing any work in connection with the cultivation or harvesting of sugar cane, and the weeding that he does has nothing to do with the sugar cane.

(Testimony of Jack W. Hall.)

It is merely on the railroad right of way.

Q. Does it have anything at all to do with the processing of sugar cane in the mill?

A. No.

Q. Turn to the next employee. [347]

A. This employee's duties are divided between the transportation activity and the activity in processing the cane. On days when he is unloading the cars as they come in and cleaning up around the loading station, getting the empty cars out, he is engaged in transportation; he is acting as a watchman on the wash carrier, and then he is not engaged in transportation.

Q. That is, he would then in respect to that activity be connected, be doing things in connection with sugar processing, is that what you mean?

A. Well, he'd certainly be, I would say that is so.

Mr. Gladstein: Does your Honor want to stop now? I see that I have run over the time.

The Court: That's all right. If it is convenient, we will call it a day. You got down to 53. You covered 53. You are down to 54. We will continue this case, then, at nine o'clock tomorrow morning.

(The Court recessed at 1:05 o'clock p.m.)

Honolulu, T. H., September 19, 1947

The Clerk: Civil No. 787, Waialua Agricultural Company, Limited, Plaintiff, versus Ciraco Maneja and others, for further trial.

JACK W. HALL,

a witness in behalf of the Defendants, having previously been sworn, resumed and testified further as follows:

Direct Examination
(Continued)

By Mr. Gladstein:

Q. Mr. Hall, as we suspended yesterday you completed your testimony concerning the employee whose duties are set forth in paragraph No. 53 of the complaint. Will you now turn to the next paragraph and testify with respect to the duties of that one?

A. Insofar as employee 54 is concerned, Bernabe Hernandez, most of it, he appears to be working in a cane-cleaning plant performing work in connection with the actual processing. It is clear that part of his operations have to do with bringing the full cane cars into the cane-cleaning plant and taking the empty cars out, which under our theory is transportation.

Q. Nothing is done to the cane as such during the period when it is in the course of transportation in these [349] cars in or out of the mill, isn't that correct?

A. It is merely shunting the cars around.

(Testimony of Jack W. Hall.)

Q. And with respect to the off season?

A. During the off season he is not doing any work connected with the processing. He is engaged in actual repair of the machinery.

Q. All right, will you turn to the next one?

A. This employee is not doing any work in connection with the actual processing as we see it. He is engaged in transporting waste material away from the mill.

Q. A truck driver?

A. "Teamsters" is the usual term.

Q. No. 56?

A. I think it is conceded that this employee is engaged clearly in processing except during the off season. He is repairing equipment.

Q. What about 57?

A. On 57, this employee is engaged in mill processing during the week-end. The mill is shut down and there is no processing going on when he is making minor repairs, cleaning vacuum tubs and the like.

Q. Fifty-eight?

A. The same situation is true of 58, that is, during the week-end shut down there is no processing going on and he is engaged in doing general repair work. [350]

Q. Is the shutdown for week-end repairs typical characteristic of the industry?

A. The industry generally shuts down for a 24-hour period in each week.

(Testimony of Jack W. Hall.)

Q. Is it the same in all plantations?

A. Generally the same.

Q. During the shutdown, as I understand it, no processing of sugar at all is taking place, is that right?

A. Correct.

Q. What about No. 59, Mr. Hall?

A. The same situation is true on the week-end work. No processing is going on.

Q. Same thing about the off season?

The Court: You said no processing of sugar during the week-end shutdown. Does sugar include molasses and liquid sugar in every form—syrup?

The Witness: No grinding, that is, the crushing of the juice out of the cane, there is no boiling operations going on, none of the centrifugals are in operation, none of the bagging operations are going on.

A. (Continuing): We are on 59. Same is true of this employee on week-ends when no processing is going on. He is engaged in operations that are repair work and cleaning work.

Q. That's also true about off season? [351]

A. As to this employee, I don't know where he works during the off season.

Q. All right. Take the next one.

Mr. Poole: Which number are you on?

A. I have just finished 59. On 60. He likewise is engaged in cleaning work on week-ends and no processing is going on. During the off season he is likewise engaged in operations that are not being conducted in conjunction with processing.

(Testimony of Jack W. Hall.)

Q. Sixty-one?

A. On 61, he is engaged in bagging sugar but also after the sugar is bagged he is engaged in an operation that is similar to warehousing work, that is, he is either stacking it directly into railroad cars, shipping, or he is stacking in warehouses for temporary storage.

Q. Is it true that the time that employee performs duties involving, as the stacking of bags of sugar, and so on, that the sugar cane has been completely processed into sugar prior to that stage?

A. Processing operation is complete when it goes either into the bag, if it is coming directly, or into the temporary storage bin before it is bagged.

Q. Any further testimony concerning employee in paragraph 61?

A. Except that during the off season, of course, [352] none of his work is in connection with processing.

Q. Sixty-two?

A. In connection with 62, the fire room employee, Dionicio Carrit, it should be noted that the steam pressure generated in the fire room goes for the operation of power plant machinery, and back in 24 of the stipulation, paragraph 24 of the stipulation it points out that the electric power from this machinery is used for other operations than processing.

Q. Anything further on that employee?

A. No, that's all.

(Testimony of Jack W. Hall.)

Q. Sixty-three?

A. Point out in connection with this employee that the electricity generated by the power plant is used for other purposes than processing.

Q. Sixty-four?

A. Well, this employee's duties cover the whole range of plantation activities whenever there is machine shop work, and much of it may be for the mill and much for field equipment, some for transportation equipment, and his work is not exclusively in connection with the processing operations.

Q. Or in connection with agriculture?

A. Or in connection with agriculture.

Q. Sixty-five? [353]

A. This employee making repairs on locomotives is making repairs on all locomotives which may be used either in transportation of cane from the field to the mill, it may be used to transport supplies on the O.R. and L. lines to Company warehouses. It may be used in hauling sugar after it is refined to the O.R. and L. lines where it is taken—

Q. You mean after it reaches the raw sugar stage? A. After it is bagged.

Q. Anything else?

A. On 66, note that the operations of the welding shop include the whole range of plantation activities. It may be doing welding work on equipment used in the actual cultivation and harvesting or transportation equipment or in the processing operations.

Q. Sixty-seven?

(Testimony of Jack W. Hall.)

A. Note in connection with this employee, while he repairs and makes parts for field equipment, that field equipment is used in operations other than the preparation of the soil, the cultivation and harvesting. It is also used in some of the transportation operations. It is also used on occasion in road building.

Q. Sixty-eight?

A. On No. 68 the repairs that this individual makes to auto and truck radiators is for autos and trucks that [354] are to be used throughout the whole range of plantation activities, not exclusively for field operations.

Q. In other words, any or every aspect of the social, economic, recreational and other phases of the life of the entire plantation, would that be right?

A. That would be generally correct.

Q. Next number?

A. On 69 the cane-loading machinery, cane-loading employee, I think we should note that the cane loaders that he is repairing are used in connection with the transportation operation, as I explained the other day, yesterday.

Q. Seventy?

A. On 70 just note that tractors are used in operations other than the preparation of the soil and the harvesting of the cane, planting and harvesting of the cane.

Q. Seventy-one?

A. Well, this employee performs work on ve-

(Testimony of Jack W. Hall.)

hicles that are used throughout the plantation operations, as noted in the stipulation.

Q. Next?

A. On 72, Antone Robello, the fuel and lubricants and water he delivers to plantation field equipment, is to the equipment that is also used in operations other than the actual preparation of the soil planting and harvesting.

Q. Proceed. [355]

A. On 73, note that in supplying fuel oil for plantation bathhouses, supplying fuel oil for bathhouses used by all types of employees in the Company.

Q. Proceed.

A. Seventy-four, I think the stipulation is very detailed. Seventy-five, this employee is engaged in doing carpenter work on all phases of, most phases of plantation activities. In connection with the transportation activities and in connection with the cultivation activities and, of course, in connection with the water supply system of the plantation, water that is not used exclusively for irrigation. In 76 I think the stipulation is complete. The same is true of 77. Seventy-eight is complete. On 79, well, this employee while engaged in primarily in making analyses of juices and the like in the mill, also assists in making analyses of the nitrogen and moisture content of the actual cane from the fields. In making those analyses she doesn't change the character of the cane any. It is still there in the fields. And it is not part of the cultivation of cane. The

(Testimony of Jack W. Hall.)

same is true of employee 80, actually engaged in a chemistry process.

In 81 the description is very broad and I think complete. I have nothing to add to 82. The same is true of 83. On employee 84 I have nothing to add.

Q. Eighty-five? [356]

A. And on 85 I think the description is quite complete.

Mr. Gladstein: Mr. Poole has agreed to stipulate with me as to the authenticity of a document which I desire to introduce in evidence. The document is entitled "Labor in the Territory of Hawaii, 1939, Bulletin No. 687." It is a publication of the U. S. Department of Labor, Bureau of Labor Statistics. It carries the imprimatur of the United States Government Printing Office, Washington, 1940, and is officially known as House Document No. 848, 76th Congress, third session. It appears in the report itself, in the publication itself, that House Resolution No. 519 was adopted in 1940 ordering this report printed as a House document. I understand that the authenticity has been stipulated to.

Mr. Poole: May I examine it, your Honor? I don't think I shall have any objection to it. (Mr. Gladstein hands a book to Mr. Poole.) I have no objection.

Mr. Gladstein: With your Honor's permission I'd like to withdraw, have the document marked and then withdrawn by leave of Court for two reasons: first, this is our only copy; and secondly, we have marked it up and, of course, I don't want

(Testimony of Jack W. Hall.)

private markings to be thought to be evidence in the case. I understand the Territorial library has a copy and I am wondering whether I could supply a clean copy [357] at a later date. I'd have to write to the Department of Labor and obtain it. If I cannot do that, then I will undertake to make erasures of the things that have been written here and introduce it.

The Court: Well, you are offering it now?

Mr. Gladstein: Yes, I am, your Honor.

The Court: All right. It may be received in evidence as exhibit what?

The Clerk: Defendants' exhibit No. 1.

The Court: Exhibit what?

The Clerk: One.

(The document referred to was received in evidence as Defendants' Exhibit No. 1.)

The Court: Subject to the withdrawal and the substitution of a similar document, and that the notations in handwriting are not part of the exhibit.

Mr. Gladstein: Yes, your Honor. Would it be convenient for your Honor to take a very brief recess at this time?

The Court: Yes.

(A short recess was taken at 9:30 a.m.)

After Recess

Mr. Galdstein: Your Honor, I understand this to be the fact, that I stated and asked counsel to stipulate to it as a fact that the only plantation in the Territory which is not a member of the Ha-

(Testimony of Jack W. Hall.)

waiian Sugar Planters Association [358] is the Gay and Robinson Plantation, is that right?

The Court: I believe there is another.

Mr. Gladstein: Waianae and Waimanalo are also not in the H.S.P.A. That's the fact. Will you stipulate to it?

Mr. Poole: Your Honor, I am willing to stipulate to that fact but I don't see its relevancy, and in order to protect my record that I should offer an objection to it, but I have no objection to stipulating to it. And he hasn't pointed out why it is relevant to this case.

Mr. Gladstein: Well, does your Honor wish me to express my theory of the relevancy of it? I think I disclosed that in my opening statement. It is my contention that we do not have in the Territory farmers engaged in agriculture. We have manufacturers of sugar, and it goes beyond the manufacturing of raw sugar. It goes actually to the point of refining sugar and marketing that refined sugar in the United States. And in the evidence that was received this morning, the publication of the Department of Labor entitled "Labor in the Territory of Hawaii," there are statements of fact which are evidenced in this case to the effect that approximately 60 per cent of all of the unrefined sugar produced by the plantations in Hawaii is refined by the California and Hawaiian—what is that Company?—refinery at Crockett, California. [359]

The Court: That can't be so.

Mr. Gladstein: Beg your pardon?

(Testimony of Jack W. Hall.)

The Court: That can't be the fact.

Mr. Gladstein: It so states. And I understand——

The Court: Some of it goes to Western.

Mr. Gladstein: Yes, I said approximately 60 per cent.

The Court: Oh, I beg your pardon.

Mr. Gladstein: Approximately 60 per cent is refined at C. and H. at Crockett, California, and the C. and H. Company is a cooperative which is wholly owned and controlled by the Sugar Plantations here in the Territory. It is true that another portion of the sugar is refined at the Western Sugar Refinery, which I think is in San Francisco. And another portion at some eastern refinery.

Mr. Poole: Your Honor, I still can't see the relevancy of this particular evidence. The purpose of this suit is to determine the application of the Fair Labor Standards Act, to name defendant employees—it's been agreed by the parties that none of those employees have anything to do with refining. Their activities cease with the making of the raw sugar and its delivery to the O. R. and L. That is so stated in the stipulation. And he still hasn't explained how this other evidence is relevant. So I still want to note my objection to the testimony.

The Court: Well, the evidence hasn't been offered. [360] He, as I took it, asked you to stipulate to a statement as being a fact without regard

(Testimony of Jack W. Hall.)

to whether it was evidence or not. And it hasn't been offered as evidence before us. Unless it should be through the pamphlet, the bulletin.

Mr. Gladstein: I can't pick any statement out of here offhand. I will withdraw that.

Q. Mr. Hall, were you personally present at a hearing held in 1941 before the Bureau of Unemployment Compensation of this Territory?

A. I was.

Q. Did you testify to that hearing?

A. I did.

Q. And what in general was the purpose of the hearing?

A. The purpose was to determine the reasonable value of perquisites under the Unemployment Compensation Law.

Q. Were representatives of the Waialua Company, the plaintiff in this case, present at that hearing?

A. Well, there were representatives from the Hawaiian Sugar present.

Q. And if the record shows that Mr. J. O'Donnell and Robert W. Taylor were present——

A. I recall Mr. Taylor being present.

Q. You testified there as a union representative?

A. I did.

Q. And the subject matter was the question of the [361] cost of perquisites, is that true?

A. That is correct.

Q. Now, after the hearing, were you supplied

(Testimony of Jack W. Hall.)

with a copy of the transcript? A. We were.

Q. A record was being made of the testimony and of what took place at the hearing, is that right?

A. That's correct.

Q. And after you received a copy of the transcript did you read it? A. Many times since.

Q. And your recollection is what as to whether or not that was a true transcript of what had taken place, of what had been said?

A. I believe it was a true and correct transcript of the proceedings.

Q. Now, I want to read to you from a copy of the transcript a small portion and ask you whether to your recollection that statement or the statement in substance was made at the time and place indicated, namely, February 13, 1941, at this hearing that I have referred to at 217 South King Street, Honolulu, whether you heard Mr. Frederick Simpich, Jr., give testimony on behalf of the H.S.P.A. and its members? A. I do. [362]

Q. And did he or not make the following statement in part: "As you no doubt are aware employees of sugar plantations are required by their employers to live on the plantation premises in quarters furnished to them. The quarters are furnished for the convenience of the employers in order to have the employees available at all times to insure the proper and efficient operation of the plantation."?

A. I recall that statement in substance quite

(Testimony of Jack W. Hall.)

vividly because we have used it many times since in our publicity.

Mr. Gladstein: That's all. Cross-examine.

Mr. Poole: Does the defendant rest with the case?

Mr. Gladstein: I said you may cross-examine.

Cross-Examination

By Mr. Poole:

Q. I think you stated, Mr. Hall, that you presently held a position with the I.L.W.U.?

A. That's correct.

Q. What was that position or is that position?

A. Regional director for the Territory of Hawaii.

Q. Could you state in a very general way what your duties are in that capacity?

A. My duties in that capacity are to apply the policy of the international union as laid down through the convention through the executive board and through the international officers to whom I am directly responsible, [363] and to assist the local unions in negotiation, in handling grievances, and representation before Government agencies, and all similar sorts of representation.

Q. Are you influential in the establishment of policy in your union?

A. I would say that I am to some extent.

Q. Is it true that you are a paid employee or representatives of the I.L.W.U.?

A. I am certainly paid. Otherwise I'd miss a lot of meals.

(Testimony of Jack W. Hall.)

Q. Would you say that it constitutes a substantial source of your income?

A. It is my only source of income.

Q. Now, Mr. Hall, is the I.L.W.U. in favor of the elimination of agricultural exemption from the Fair Labor Standards Act?

A. It made such representation to Congress.

Q. It had?

The Court: May I have that over again?

(The reporter read the last question and answer.)

Q. Mr. Hall, is it not also the fact that the I.L.W.U. requested a 40-hour work week for all workers on the sugar plantations last year, including those whom you would now classify as agricultural?

A. That's correct. We believe 40 hours a week is [364] enough work for any individual.

Mr. Gladstein: May I ask Mr. Poole whether the question goes to a request of the union in collective bargaining negotiations or a request for legislation?

The Witness: Was a collective bargaining request.

By Mr. Poole:

Q. Well, now, is it not true that any restriction of the agricultural exemption by a decision of court would further the objectives of the union in achieving a 40-hour work week for plantation labor?

A. I don't think so.

(Testimony of Jack W. Hall.)

Mr. Gladstein: I object. Just a minute. I object to that, your Honor, upon the ground that it calls for speculation and is immaterial.

The Court: It strikes me that way, that the witness could give nothing more than his own view or possibly the—I can't quite see how that would be material.

Mr. Poole: I want the question to remain, your Honor, and I will take the objection, assuming that you have overruled it.

The Court: Well, let's have that question.

(The reporter read the last question and answer.)

The Court: All right. The answer is in.

A. Well, I'd like to expand upon it, if I have to answer the question. [365]

Q. You may proceed.

A. I don't think so, because we now have employees in the industry working on a 40-hour work week and receiving overtime after 40 hours.

Q. Well, is it not true that most of the employees during the grinding season do not receive time and a half after 40 hours?

A. That is true. But there are employees who do.

Q. What employees receive time and a half after 40 hours?

A. Warehouse employees in many situations, particularly mill warehouse employees.

Q. Do you know of your own knowledge how

(Testimony of Jack W. Hall.)

many employees receive time and a half after 40 hours? A. I do not.

Q. At Waialua? A. I do not.

Q. Is it not true, Mr. Hall, that you are a defendant in this case?

A. I understand I have been named as a defendant.

Q. Is it not true that most of the employees who are defendants in this case are members of the I.L.W.U.?

A. I don't know. I presume they are.

Q. You don't know as a fact?

A. I don't know all of them individually. [366]

Q. Well, would you say that many of them certainly are members?

A. I could say that I think safely.

Q. It is true, however, is it not, that the I.L.W.U. bargains for all such employees?

A. That is true.

Q. Now, is it not true that any employee who is held to be entitled to the overtime requirement of the Act because of the inapplicability of the agricultural exemption will benefit from it in terms of overtime compensation?

A. I believe that is so.

Q. Now, Mr. Hall, in view of the fact that many, if not all, of the employees, employee defendants, in this case are being represented by the I.L.W.U., as you have just stated, in view of the further fact that you are a paid employee and international rep-

(Testimony of Jack W. Hall.)

representative of such union, do you not admit that you are not in a position to testify impartially on the question of what constitutes agricultural labor?

A. I am in a position to testify impartially. I think my record in this community for impartiality in these situations is above reproach.

Q. You don't think that you are—you don't think that your loyalty and your allegiance to the I.L.W.U. and the principles for which it stands require you to testify as [367] you have?

A. Require me to tell the truth.

Q. Now, Mr. Hall, were you ever employed by the Waialua Agricultural Company?

A. No.

Q. How many times have you been on the plantation? A. At Waialua?

Q. Yes. A. I would say about ten times.

Q. Ten times? Let's take the most recent time that you were there. Can you fix the date of that?

A. Offhand I would think about three months ago.

Q. How long were you there three months ago?

A. Oh, several hours.

Q. How much time would you say you have spent on the plantation in your ten different visits?

A. Perhaps a total of 30 or 40 hours.

Q. I think you testified to the fact that you had not been through the mill.

A. I had not been through all the mill. I had been in the garage. I have been in the area where the cane goes into the mill, that is, the crushing

(Testimony of Jack W. Hall.)

plant. I have not been in the boiling house at that mill.

Q. Have you been in the fireroom?

A. I don't recall. I don't think so. [368]

Q. Have you been in the powerhouse?

A. No.

Q. Have you been in the machine shop?

A. I have been through most of the shops.

Q. Have you seen the cane loading machine in operation?

A. I think so but I don't recall all the detailed process in that particular mill.

Q. You are not sure that you have seen it?

A. Oh, I know I have seen cane going into the mill. I haven't crawled all over the plant.

The Court: Cane-loading machine, would that be an operation in the field?

Mr. Poole: That's a field operation.

The Witness: The cane carrier.

Q. Now, it is a fact that you have not seen the cane-loading machine which operates in the field?

A. I have had that operation described to me in detail by employees who are engaged in that operation.

Q. In other words, it was told but by someone else?

A. By employees engaged on that operation.

Q. I see. In other words, it is a fact, is it not, Mr. Hall, that you have not actually witnessed yourself the harvesting operations at the Waialua Plantation?

(Testimony of Jack W. Hall.)

A. That's a correct statement. I have witnessed harvesting operations throughout the industry and generally [369] the—

Q. Mr. Hall, please, you have stated that several times. It is in the record. And I'd like to have you confine yourself now just to the answers because we are going to get ahead much faster. Have you ever had an opportunity to view personally the manner in which the loaded cars come from the field over the portable tracks on to the main line and from thence to the mill?

A. At the Waialua Agricultural Company?

Q. Yes. A. Not at that plantation.

Q. Have you ever had an opportunity to study the irrigation system they have in effect at Waialua? A. No.

Q. Mr. Hall, from what you have said, it is true, is it not, that you do not have any detailed acquaintance with the operations at Waialua Agricultural Company?

A. At Waialua as such, no, but as I maintained throughout my testimony on direct examination the practices are similar on all plantations, and I am familiar with them at others.

Q. Mr. Hall, you have had a good deal to say regarding the operations of the plantations generally, sugar plantations generally in the Territory of Hawaii. Do you know how many plantations grind their own cane? [370]

A. All but Grove Farm, Gay and Robinson and the Waimea Sugar Mill Company on the Island of

(Testimony of Jack W. Hall.)

Kauai. Waimea Sugar Mill Company once had a mill that now grinds its cane at Kekaha Sugar Company. The Waianae Company, which is going out of business, I think, is grinding its cane at Ewa now rather than in its own mill. I can't testify to that positively. I haven't been out there for some months.

Q. Would you repeat that?

A. Waianae Company I think is grinding its cane at the Ewa mill. I can't testify to that positively because that Company has been in the process of going out of business. I haven't been out there for some months. All of the mills on the Island of Maui grind their own; all the plantations on the Island of Maui mill their own cane. All of the mills on the Island of Hawaii mill their own cane. As a matter of fact, Pepeekeo Plantation now has two mills with the consolidation of the Honomu Plantation and Pepeekeo Plantation into a single Company.

Q. I think the record states through the stipulation that there are some 34 plantations in the Territory of Hawaii. And how many did not grind their own cane?

A. Gay and Robinson.

Q. I mean the number.

A. Three. [371]

Q. Three?

A. And possibly Waianae, which would make four. I am not positive as to the situation there because it is in the process of liquidation.

Q. So you'd say that it is a fact that ordinarily most sugar plantations grind their own cane?

A. Well, of course, there are plantations that

(Testimony of Jack W. Hall.)

grind cane from adherent planters and from home-
tenders.

Q. I understand that but I say it is true that
most plantations ordinarily grind their own cane?

A. Grind any cane that is available to grind.

Q. Well, you are not answering my question.

A. They grind their own cane plus other cane.

Does that answer it?

Q. That is not my question. Isn't it true, Mr.
Hall, that most plantations ordinarily grind their
own cane?

A. If they have a mill, yes.

Q. Well, haven't you just stated that most of
them have a mill? A. That is correct.

Q. I don't understand your reluctance. It seems
to me it is obvious from what you said.

A. I don't understand what you are trying to
get at. The testimony is very clear.

Q. Are you at all familiar with the operations
that [372] have to do with the cutting of wood at
Waialua?

A. At Waialua specifically I have never seen
wood cut.

Q. You have never seen wood cut?

A. At Waialua.

Q. And you don't know for which purpose the
wood is used?

A. I know it is used for bathhouses because we
have been so informed. I understand we had some
discussions with the plantations about whether or
not they were going to supply it.

(Testimony of Jack W. Hall.)

Q. But your information is second-hand; you do not know of your own knowledge the purpose?

A. That is correct. I suppose it would be called second-hand but I rely on my informants.

Q. Mr. Hall, do you know the uses to which the irrigation water or water that comes down the ditches, to which there was some testimony, is used?

A. I understand some of the water is used for the locomotives. They use irrigation water because the well water is a little bit too brackish for locomotive boilers.

Q. Do you know that to be a fact of your own knowledge?

A. I have been told by engineers on the locomotives who put it in there. [373]

Q. Is it customary to clean a sugar house each week-end in the Territory of Hawaii?

A. Not the entire place, no.

Q. Well—

A. Some operations have to be performed every week-end.

Q. Well, is it a predominant practice in the Territory of Hawaii?

A. Only a small number of employees are usually engaged in performing week-end work.

Q. Mr. Hall, you are not responding to my question. What I am asking is this: Is it the practice by most of the plantations in the Territory of Hawaii to shut down their grinding operations and clean their mill?

(Testimony of Jack W. Hall.)

A. Grinding operations are shut down and mills are cleaned, that is correct.

Q. Each week-end?

A. The mills are shut down every week-end.

Q. For purposes of cleaning?

A. Also for the purpose of giving employees a day off as they are required to do under the contracts.

Q. Well, is it true that each week-end the different plantations do make repairs and clean the mill that is being used for sugar grinding in the making of raw sugar?

A. It is true that there is some work going on in [374] each mill insofar as I know on the week-end shut down, cleaning and hauling ashes, things of that kind.

Q. Well, now do you know of your own knowledge how many employees are working in connection with week-end repairs and cleaning in the mill at Waialua Agricultural Company?

A. I don't know the exact figure at Waialua.

Q. You do not? A. I do not.

Q. Well, would you say from your knowledge of the operation of sugar plantations here in the Territory of Hawaii that it is necessary to shut down the mill each week-end for purposes of repairing and cleaning it? A. I would say so.

Q. Are there any repairs made during the week?

A. Repairs that may be necessary in case of a breakdown.

Mr. Poole: Your witness.

(Testimony of Jack W. Hall.)

The Court: Aren't there continuing repairs of some sort day after day, week after week, as the necessity arises to repair various things?

The Witness: That's right, whenever anything breaks down that has to be overhauled. Lots of those repairs might go on while there is processing going on in the mill.

Redirect Examination

By Mr. Gladstein [375]

Q. Mr. Hall, you mentioned that the mills of the plantations of the sugar companies in the Territory besides grinding cane of their own grind cane of others. Would you explain?

A. Well, for example the Lihue Plantation Company grinds all of the cane for the Grove Farm Company.

Q. Do you know the arrangement there? I mean, does the Lihue Company buy the cane from the others or does it simply in substance and effect charge the Grove Farm Company for a service, namely, that of grinding sugar which is performed by the Lihue Company?

A. I can't testify to their financial arrangement.

Q. Go ahead.

A. The sugar grown by the Gay and Robinson Plantation is processed by the Olokele Sugar Company. And the sugar grown by the Waimea Sugar Mill Company is processed by the Kekaha Sugar Company. On the Island of Hawaii there are a large number of planters who either grow cane on leased land or in some cases on their own land. This

(Testimony of Jack W. Hall.)

cane is ground by the mills on that island. Olaa is one of the largest.

Q. Those planters that you have just testified about are the same as the adherent planters that you testified about earlier?

A. That is correct [376]

Q. Now, what is the arrangement that is used, the adherent planters sell their cane to the mill to be ground for them or what exactly happens?

A. The price they receive for their cane is fixed by, under the Sugar Act of 1937. They sign contracts with the individual growers but the minimum rates to be paid are fixed under the Sugar Act by determination.

Q. So in other words, those mills grind both the sugar cane which is grown on the land owned by the milling company and the cane that is purchased in effect from adherent planters, is that right?

A. That's right. It is purchased. The agreements read "Cane Purchase Agreement".

Mr. Gladstein: I have no other questions.

The Court: Well, I don't suppose it's material about what about the Pacific Sugar Mill?

The Witness: It is now part of Honokaa.

The Court: It's been absorbed?

The Witness: That's correct.

The Court: Puna Sugar Company?

The Witness: That's been absorbed by Olaa.

The Court: And Kukaiau?

The Witness: That is, I believe, is part of the Hamakua Mill now.

(Testimony of Jack W. Hall.)

The Court: The landowners don't continue to plant? [377]

The Witness: There are cane planters at Kohala, the planters association there; that cane is milled, I believe, by Honokaa.

The Court: Wailea?

The Witness: Wailea, that is also liquidated. I believe it is now part of Kohala.

Mr. Gladstein: One more question, Mr. Hall.

Redirect Examination

By Mr. Gladstein:

Q. Is any refining of sugar done by any of the members of H.S.P.A. in the Territory?

A. I don't know whether C. and H. is now a member of the H.S.P.A. Formerly the Honolulu Plantation Company, which was a member, refined sugar. That firm liquidated and was taken over by California and Hawaiian Sugar Refining Corporation. They are solely in the process of refining sugar at Aiea. The Maui Agricultural Company mill on the Island of Maui did do some refining. I don't know whether they are doing it this year.

Mr. Poole: Your Honor, I ask that the question and the answer be stricken. It is not relevant here at all.

The Court: I don't recall the question now.

(The reporter read the last question and answer.)

The Court: Well, is it the question that is objected to? [378]

Mr. Poole: I object to the question and I object

(Testimony of Jack W. Hall.)

to the answer. I see no relevance at all in relation to the issue that we have before us.

Mr. Gladstein: If I may state in defense of my question, your Honor, that it is a question which derives from my theory of this case which, as I said before is that these companies are in a business, part of which, an integral part of which is the refining of sugar. And that integral and very substantial aspect of their total operations colors and in turn integrates into the rest of their operations. And I think we have a right when we are talking about sugar processing exemption to show that it is a fact that any of the companies who are claiming this kind of an exemption are actually in a business which includes refining of sugar.

The Court: Well, I can't see where that is in any respect true except possibly as to those who are in the cooperative refinery, the California and Hawaiian Refinery. Their interest and operations may be, so far as to refining of sugar, but those who sell to other raw sugar producing mills or sell to refineries to which they have no attachment, I can't see where that——

Mr. Gladstein: I agree with your Honor. The point is that Mr. Hall's testimony is that the C. and H. Company, which is the company through which the Plaintiff in this [379] case and the other case and the other members of the H.S.P.A. get the greater portion of their raw sugar refined and put in a condition for marketing to the consumer,

(Testimony of Jack W. Hall.)

that very company, C. and H., is the one which has taken over a refinery here in the Territory it operates. That is as I understood Mr. Hall.

The Witness: That's correct.

Mr. Gladstein: So I think, your Honor, that under the circumstances the question can be answered or is clearly admissible for whatever weight the Court attaches to it.

The Court: All right. The motion is overruled.

Mr. Poole: What was your ruling?

The Court: Overruled.

Mr. Gladstein: I have no further questions.

Recross-Examination

By Mr. Poole:

Q. Mr. Hall, do you know whether or not there is a transfer of title by the plantations of their interest in the raw sugar when it goes to the refinery?

A. I do not.

Q. You do not? In fact, you know nothing about that subject matter, is that not correct?

A. I do not have that information here. I know our files are full of it.

Mr. Poole: That's all.

Mr. Gladstein: I have no further questions.

The Court: When was sugar unionized in Hawaii?

Mr. Poole: I can't hear your Honor.

The Court: I asked the witness when sugar was unionized in Hawaii. I asked and explained to the witness that that is outside of the case.

(Testimony of Jack W. Hall.)

The Witness: The first union was organized in 1938. We got our first contract at McBryde Sugar Company in 1941. But the industry as a whole was not completely organized until July, 1945.

The Court: All right.

(Witness excused.)

Mr. Gladstein: We rest, your Honor.

Mr. Poole: Your Honor, I want to renew the objection I made to Mr. Hall's testimony and rest it upon one further ground. In answer to the questions that I put to Mr. Hall on cross-examination, he stated very clearly that he had no personal knowledge of the things to which he had testified. Now, I would have had no objection to his testimony had it been purely of a factual nature. However, in his testimony he sought to attach a classification of either agricultural, transportation, or processing to each one of the employee defendants regarding whom he testified. As I told you yesterday, I think that that is highly improper. I think that none of that testimony should have been admitted. And today I make the point that his testimony is practically [381] all hearsay. Now, I understand that there is much of a general informative character about Mr. Hall's testimony, and no doubt your Honor feels that it will assist you in reaching a decision. But it seems to me in order to appropriately protect the interest of my client that I must have the objection, and I make it here again.

The Court: Well, your motion is to strike all of his evidence?

Mr. Poole: That's correct.

The Court: Upon the ground that it is incompetent?

Mr. Poole: Yes, and it is hearsay by his own admission.

The Court: The motion is denied.

Mr. Gladstein: There is one further thing I want to offer before resting, your Honor. I overlooked it. Perhaps we can stipulate to it. Certain portions of a document which is known as Sugar Manual, and which is a publication of the Hawaiian Sugar Planters Association, some of the material in it is clearly not relevant to these proceedings and wouldn't be material as evidence, and I wonder if it wouldn't be in the interest of saving time if during the recess Mr. Poole and I went through it and agreed on what portions we can introduce by way of a stipulation.

Mr. Poole: That is agreeable to me.

The Court: Well, you ask to reserve the right to offer [382] that, if there is any part of it that——

Mr. Gladstein: I do. That would be Defendants' Exhibit 2. And perhaps we ought to identify it for the record. It will consist of certain pages of a publication entitled "Sugar Manual" and published by the Hawaiian Sugar Planters Association.

The Court: Well, Mr. Clerk, you may put your identification on it.

The Clerk: That will be Defendants' Exhibit No. 2.

The Court: For identification.

The Clerk: For identification.

The Court: We have at the present time——

The Clerk: Defendants' Exhibit A for identification

Mr. Poole: Your Honor, could we take about a ten-minute recess now? I will then be prepared to go forward.

The Court: The Court will take a recess.

(A short recess was taken at 10:30 a.m.)

After Recess

Mr. Poole: Mr. Anderson, will you take the witness stand?

JOHN WILLIAM ANDERSON

a witness in behalf of the Plaintiff, being duly sworn, testified as follows: [383]

Direct Examination

By Mr. Poole:

Q. Mr. Anderson, will you state your full name? A. John William Anderson.

Q. And would you give your address?

A. Waialua, Oahu, T. H.

Q. What is your present position?

A. Assistant Manager of the Waialua Agricultural Company.

Q. How long have you held that position?

A. Since September, 1941.

Q. Could you state in a general way what your

(Testimony of John William Anderson.)

duties and functions are as Assistant Manager of the plantation?

A. My general duties are to assist the Manager in the development and administration of the Company policies and to coordinate the various departments on the plantation.

Q. Would you say that you were rather familiar with the over-all operations at the plantation?

A. Yes, I am.

Q. Mr. Anderson, it has been stated by a previous witness that on the week-end shutdown of the mill there was no sugar being made. Is that a correct statement?

A. Well, on occasions where we are blocked up in the boiling house, it is necessary to continue some of the boiling and drying operations. Every week-end there is [384] still some sugar in process, technically, in that low-grade mesquite in the crystalizers are in process; that is, the mesquite has the tiny grains of sugar and molasses, and these grains are growing while they are in the crystalizers, so that technically there is some sugar in process even during the week-end shutdown. Very occasionally the low-grade sugars are being dried in the crystalizers over the week-end, but that is not normal practice.

Q. What is the purpose of closing down the mill on the week-end in terms of ceasing to grind sugar cane?

A. Well, there are several reasons. The boiling

(Testimony of John William Anderson.)

house and the evaporators, the tubes, get a heavy scale on them and it is necessary to clean those tubes over the week-end. Otherwise the boiling of the juices is very inefficient with the heavy scale on the tubes. So it is necessary approximately every week-end to clean the tubes. In the crushing plant there are many usually minor repairs that have to be made. Occasionally they have to make major repairs such as changing the roller to improve the extraction and changing worn parts, such as the knives in the cane carrier, and perhaps some slats in the cane carriers, and repairs of that type.

Generally the repairs are not major but not infrequently we do have major repairs to make on the week-ends.

Q. Well, is it not so that you are closing down, then, [385] for purposes of repairing and cleaning the mill?

A. That is correct. It is also true that we are operating on a policy of one day of rest per week, so that field operations are shut down and to some extent the factory personnel have a day of rest. Some of those operating personnel are required for the maintenance work on the week-end.

Q. Well, are there reasons of sanitation why you close down and clean up?

A. There—I don't think that is a major factor. There would be some connection there. There are places where we have moving machinery where

(Testimony of John William Anderson.)

stuff piles up during the operating period and you have to shut the machinery down to clean it up.

Q. How many employees are working during the close-down of the mill on the week-end in this repair and clean-up work, approximately?

A. It varies from week to week depending on how many men you can get to turn out to do the necessary work. Usually we have a satisfactory turnout for that purpose. And it also depends on how much work has to be accomplished. I would say that out at Waialua we would probably run approximately sixty to a hundred men for the clean-up work over the week-end.

Q. Now, what percentage is that of your normal working [386] force in the mill when you are grinding?

A. Well, that would run from approximately 35 to 50 or 60 per cent.

Q. Is there some repair work done during the course of the week?

A. Yes. Sometimes it is necessary to shut the mill down to make the repairs. And sometimes repairs can be made without shutting.

Q. Are those repairs of the same general nature as the repairs that are made in the week-end while the mill is shut down?

A. If possible they put over the week-end, the repairs for the week-end, over to the week-end if it happens during the week. But they can't always

(Testimony of John William Anderson.)

do that. At times it is necessary to make repairs immediately.

Q. Were you here yesterday, Mr. Anderson?

A. Yes, I was.

Q. You heard the testimony of Mr. Hall?

A. Yes, I did.

Q. You recall that there was some question raised about the duties of Augustine Lorenzo. The stipulation——

The Court: Will you give us his number?

Mr. Poole: Forty-two in the complaint and forty-three in the stipulation.

Q. The stipulation states that he is a water supply [387] ditchman. And what I wanted to ask you was this: Is some of the water used for purposes other than irrigation with which he has to do in connection with his gauging activities or in connection with his duties which involve diverting water from one ditch to another?

A. Well, a very small portion of that water will eventually get into a storage tank which would be used to replenish the water supply of the locomotives.

Q. Approximately how much do you think he'd use in that each day?

A. It's a rather small amount. I would estimate it would run somewhere between ten and fifteen thousand gallons per day.

Q. You probably were not able to fix the per-

(Testimony of John William Anderson.)

centage of the water so used in relation to the total amount of water going through those ditches?

A. We use up to approximately a hundred million gallons per day for irrigation purposes.

The Court: You mean Lorenzo?

The Witness: The ditchmen.

The Court: But Lorenzo?

The Witness: No, he wouldn't handle that quantity of water. The water goes into a system handled by other ditchmen after it passes through his particular area of responsibility. [388]

Q. Let me ask you, to go back to the answer that you gave me in connection with the work of Mr. Lorenzo and the amount of water that passed through these ditches that ultimately found its way into this tank, which water is being used for locomotives, as I understand the answer to my question you stated that the entire amount of water used for locomotive purposes was the figure that you gave and it wasn't just the water coming from the particular ditch with which the duties of Mr. Lorenzo are connected? A. That's correct.

The Court: Does that mean that this tank, the reservoir, whatever it is that supplies the locomotives, that it is fed by water from various sources, some of which is let into it by this man Lorenzo and some by other employees in different places, water tenders?

Mr. Poole: Well, your Honor, the stipulation describes in some detail the rather elaborate irriga-

(Testimony of John William Anderson.)

tion system that they have on the plantation. And it also indicates in a general way the number of personnel that are used for that purpose. And I think that by reading the description of the irrigation system and tying that in to the description that you have here of the duties of Mr. Lorenzo, you get a fairly accurate picture of what his particular duties are in connection with the over-all irrigation system.

Mr. Gladstein: Wouldn't it be simpler for him to just [389] answer the question?

The Court: What I had in mind was this: Does Lorenzo operate the water supply that feeds this tank from which the locomotives are supplied? Does he exclusively do that or does the water come into the same tank from other sources?

The Witness: I might say that many tanks are used for the purpose of supplying the locomotives. It runs all along approximately two-thirds of the length of the plantation. And I am quite sure that he does not directly distribute the water from his own source directly into any one of the tanks but the water he handles passes to other ditchmen who release it into the storage tanks.

The Court: He is in charge of the main gate, one of the larger sources of supply?

The Witness: Yes, sir.

The Court: Go ahead.

Q. I wish to now direct your attention to Tadao Watanabe.

(Testimony of John William Anderson.)

Mr. Gladstein: What number?

Mr. Poole: It carries the number 44 in the complaint and 45 in the stipulation. The stipulation and complaint describe his duties as a rake operator. He operates a bulldozer rake for making fire breaks preparatory to the burning of cane and for opening track lines. I think there is also a statement to the effect that in rainy [390] weather he may haul cane.

Q. Now, what I'd like to have you explain is whether or not the hauling of cane is done regularly as a part of his duties or whether it is rare and infrequent?

A. I would say it was rare and infrequent.

Mr. Poole: Your Honor, I should like to make a comment here for the purpose of clarity. You will note that in reading the job descriptions set forth in the stipulation and also in the complaint that there are statements to the effect that in some work weeks particularly an employee will do one thing and in other work weeks he does other things or probably duties are added to his regular duties, and sometimes those duties are stated to be rare and infrequent and sometimes they are stated to be regular duties. Now, that description, that characterization of duties was set forth in that manner most deliberately because the Fair Labor Standards Act insofar as the work week is concerned, the payment of overtime, applies on a work-week basis. And it will be necessary for your Honor to deter-

(Testimony of John William Anderson.)

mine whether or not each of these particular activities or any of them come within the coverage of the Act and a particular exemption or any exemption. And it may well be that in your view an employee might be exempt from the Act one week and then in another week where his duties are different he might be covered. So it is important to note in that connection [391] that the stipulation shows that in some weeks the duties of the individual employees who are named as defendants vary.

Now, I have no further questions to ask, your Honor, but if it is the opinion of counsel for the Defendant or your Honor that any of the jobs of the defendants in this case are inadequately described, we have a witness here that we think is in a position to testify and answer such questions.

Mr. Gladstein: Are you through with your direct examination?

Mr. Poole: I am.

Mr. Gladstein: Does your Honor want to take a recess before proceeding or shall I proceed?

The Court: You may proceed.

Cross-Examination

By Mr. Gladstein:

Q. Mr. Anderson, not long ago your Company prepared a group of job descriptions setting forth the regular and ordinary and usual duties of its employees, isn't that right?

A. That's correct.

(Testimony of John William Anderson.)

Q. Did you participate in the making up of that job description? A. No, I did not.

Q. Are you familiar with it?

A. Yes, I am. [392]

Q. You have seen it put out? A. Yes.

Q. And you know who participated in making it up? A. Yes, I do.

Q. Who were the people in charge of that?

A. One of our assistants in the industrial relations department was the person who coordinated the program and who wrote up most of the language.

Q. Yes. And was it afterwards checked by responsible people in the Company to make certain that the final product would accurately state what the job description intended to do, namely, set forth the duties and work of the employees?

A. Yes, the supervisors did check it.

Q. Now, it was then put out in typewritten form, was it not? A. That's right.

Mr. Gladstein: I will ask the Clerk first to mark this as a Defendants' exhibit for identification.

The Clerk: Defendants' Exhibit B for identification.

Q. Mr. Anderson, I show you a compilation of typewritten pages bound together in a manila folder which has been marked "Defendants' Exhibit B for identification." Will you look at it and satisfy yourself as to whether it is a true copy of the job descriptions prepared by your Company and purporting to represent, job by job, an accurate [393]

(Testimony of John William Anderson.)

statement of the various duties and functions and work and tasks of the employees of the Company?

A. I might say that these descriptions appear to be the ones that we did develop out there. I would also like to say that from time to time we have made revisions, and whether all of the revisions are incorporated in here I am not in a position to say.

Q. Do you know whether any revision has been made with respect to the particular document that you are looking at now?

A. You mean the individual job?

Q. The entire compilation?

A. Well, that's what I am referring to. Some of the job descriptions, that is, each one of these pages represents a job description; some of the job descriptions have been revised from time to time; jobs have changed in some cases, or we found reason to change them due to a reassignment of duties.

Q. Do you recall the date when that particular document, Defendants' Exhibit B for identification, was prepared and put out in that form?

A. I believe it was approximately January of 1947 but I am not absolutely sure.

Q. And it would be the most up-to-date or latest, complete and comprehensive document of its kind for the [394] Company, would it not?

A. With the exception that we may have made some revisions which would be in our Company file of the same type of document.

Mr. Gladstein: I offer it in evidence, your Honor.

(Testimony of John William Anderson.)

The Court: That would be Exhibit 2?

The Clerk: Defendants' Exhibit 2.

(The document previously marked as "Defendants' Exhibit B for identification" was received in evidence as "Defendants' Exhibit No. 2.")

Mr. Poole: Would you state the purpose of this?

Mr. Gladstein: Supplementing the descriptions.

Mr. Poole: I have asked counsel the purpose for which he introduces it and he stated in answer that he is introducing it to supplement the descriptions of the duties of the named Defendants.

Mr. Gladstein: Yes, that's right.

Mr. Poole: However, as I examined the document—

Mr. Gladstein: I will take care of the point that you raise in just a moment.

Mr. Poole: —the individual Defendants are not identified with respect to the particular jobs.

Mr. Gladstein: Just what I am going to ask Mr. Anderson next.

Mr. Poole: All right. [395]

By Mr. Gladstein:

Q. Now, Mr. Anderson, Defendants' Exhibit No. 2 in evidence you will notice identifies the employees whose job descriptions are given here by number. What number or what do these numbers refer to, badge numbers or numbers by which the employees are carried on the payroll or what?

A. Those are the payroll numbers.

(Testimony of John William Anderson.)

Q. And you could by going, by comparing Defendants' Exhibit 2 with the complaint in this case and with your Company payroll, you could very easily, could you not, prepare a list that would indicate which of the pages in Defendants' Exhibit 2 applies to any particular Defendant in the case, isn't that true?

A. With the exception that some of the individuals have been transferred to other jobs. Those were the employees assigned to those jobs at the time the job descriptions were worked up.

Q. Well, what you are saying in effect is that since there might have been some transfers from one job to another, you would get a situation where a man who is a defendant in this case who is described as doing certain things and who would appear to be an employee having a certain number and whose duties would be set forth in a certain way in Defendants' Exhibit 2 would not correctly represent the situation today but you'd have some other employee doing that [396] job, wouldn't you?

A. That's correct.

Q. So that, in other words, you could make up such a list and on the list indicate if such be the case where a transfer had been made and the name of the new employee taking the place of the one formerly handling that job?

A. I believe so.

Q. Would you undertake to do that, please, before the conclusion of this case?

Mr. Poole: I don't know whether I can agree to that or not. It seems to me that what you are going

(Testimony of John William Anderson.)

to do here is end up with an entirely new list of defendants.

Mr. Gladstein: No.

Mr. Poole: Well, I can't see the purpose, if I might say so. You are asking him to supply other names.

Mr. Gladstein: No.

Mr. Poole: You are now filling the positions previously occupied by the Defendants where they have been transferred.

Mr. Gladstein: No, all I am suggesting is this, your Honor: I would like to have, and I think it would be easier if the witness did this in his own leisure and in possession of his payroll record to assist him, I would like to have him indicate which of the pages in Defendants' Exhibit 2 apply to the job descriptions that are set forth in the complaint. And I am not concerned about the name of the [397] employee but I am concerned about getting that into the record in order to have testimony to supplement the description of the jobs that are contained in the complaint. That's all.

Mr. Poole: Well, now, wouldn't this serve your purpose: At the time this suit was brought we named four employees whom we thought fairly represented each of the categories of work on the plantation. If Mr. Anderson were to take these job descriptions and identify each employee who is named as a Defendant with one of those job descriptions, that would satisfy you, would it not?

(Testimony of John William Anderson.)

Mr. Gladstein: Yes, except that he himself has mentioned that there had been some transfers.

Mr. Poole: Yes, but that's going to complicate your record, and the question is whether you are going to go on the adjudication of the old job or new job.

Mr. Gladstein: I don't think there is anything complicated about it.

The Court: Now you are raising the question in my mind about the complaint. It was filed when, or prepared when? I suppose it is to be found here. Yes, the complaint was filed April 9th.

Mr. Poole: April, 1947.

The Court: Then later, quite recently, you entered into a stipulation relating to these men on the jobs. That [398] was filed September 12, '47. Now, you've got here a classification of work which is said to have been made probably in January of this year and changed in some particulars from time to time. Now, the employment of these men as of today or at the time this stipulation was filed, September 12—or was it when the complaint was filed or was it when this schedule was made up?

Mr. Poole: The stipulation states itself that the facts as set forth in there where they related to the dates back, I think, before 1945 and subsequently, were presumed to continue down as of the time of the filing of the stipulation. I think that is substantially what the stipulation says. Now, necessarily, your Honor, in a situation like we have here those facts are going to be changing. But for pur-

(Testimony of John William Anderson.)

poses of this suit I don't think that it makes any substantial difference.

The Court: Well, perhaps not. It would be a presumption that the work would continue all the time unless there is something to show to the contrary.

Mr. Poole: Yes.

The Court: Well, now, every one of these men have a number? Every one has a badge or number?

The Witness: Yes.

The Court: And that would clearly identify him on your payroll and in the stipulation here and in the exhibit? [399]

The Witness: Yes.

Mr. Gladstein: I think that request I made of the witness would be the most convenient way of handling it. Otherwise, I would have to tortuously take him from paragraph to paragraph looking through this. Let me say one thing further. Even though there may have been a change in job on the part of one or two or a few others, it wouldn't matter because the suit is brought in a form wherein the Defendants are named in a representative capacity. Consequently, even if there were a situation where one or two jobs had been changed, it wouldn't affect the right of the Court to make an adjudication.

Mr. Poole: I'd like to have counsel restate his request. I am not certain that I understand it fully.

Mr. Gladstein: I am asking that the witness take his payroll or other document at the Company office

(Testimony of John William Anderson.)

that gives the employment numbers or badge numbers of the employees, that he take his copy—I am sure that you have one, don't you, Mr. Anderson, a copy of Defendants' Exhibit 2?

The Witness: Yes.

Mr. Gladstein: And that he take a copy of the complaint, and that he prepare from those three a table that will show which job description page in Defendants' Exhibit 2 applies to each and every of the Defendants whose duties are described in the complaint. Is that clear? [400]

Mr. Poole: Yes.

Mr. Gladstein: So that you can get them out lineally, so that we will simply have that reference.

Mr. Poole: And what are you requesting with respect to the particular employee who may have transferred from the job that is now described in the stipulation to some other job that is not described?

Mr. Gladstein: Well, I am not even concerned that that necessarily has to show.

Mr. Poole: If you would omit that, I would be inclined to go along with you fully.

Mr. Gladstein: All right. I don't see any purpose in having it in. So I will omit that from the request.

Mr. Poole: In other words, for purposes of this stipulation we can assume that each one of the em-

(Testimony of John William Anderson.)

ployees named in the suit is continuing in the job which he occupied at the time the stipulation was prepared.

Mr. Gladstein: That's satisfactory.

Mr. Poole: O.K.

Mr. Gladstein: What we want is an adjudication not for the individual but for the job.

The Court: I wanted to get that settled some way.

By Mr. Gladstein:

Q. Now, Mr. Anderson, when you do that, will you note that Defendants' Exhibit 2 has no page designation, [401] and it would be helpful—you see, for example, you might see that employee described in paragraph 45 of the complaint as employee No. 210 in Defendants' Exhibit 2. But I would then have to look through Defendants' Exhibit 2 to find 210. So perhaps you could take this copy as well and paginate it so that we can quickly get hold of the page. Would you do that?

A. To label it with the numbers corresponding to the numbers in the—

Q. It would be easier if you simply marked these one, two, three, four, five and so on and then refer in your chart that you are going to make up to the page number in Defendants' Exhibit 2 where a particular employee whose bango number, let's say, is 35, is doing a job that is described, let's say, in paragraph 50 of the complaint, just so that you can tie those all together. Would you do that?

(Testimony of John William Anderson.)

Mr. Gladstein: May we have permission for the witness to take that exhibit for that purpose?

The Court: Yes.

Mr. Poole: May I ask counsel where he obtained a copy of this? How do you know that that is an accurate copy?

Mr. Gladstein: My understanding is that the Company distributed these and I obtained this copy from Mr. Hall of the I.L.W.U. And I understand that the purpose, the original purpose for which these were prepared was in [402] connection with the job reclassification that were taking place as a result of collective bargaining between the union and the Companies. Isn't that a correct statement, Mr. Poole?

Mr. Poole: You offer this document in evidence now?

The Clerk: It's Defendants' Exhibit No. 2.

Mr. Poole: Your Honor, I want to reserve the right to go over it and determine whether or not it is in fact the particular document for which it was offered.

Mr. Gladstein: The witness has already identified it.

Mr. Poole: I don't think the witness can identify it. It is a document with 150 or 200 pages.

The Witness: I did point out, however, that some descriptions may have changed.

The Court: Well, now, if that doesn't interfere with his taking it, if he can show us that this is not a true copy or complete copy or anything of

(Testimony of John William Anderson.)

that sort, why we will take care of the matter then.

Mr. Gladstein: That is entirely satisfactory.

Mr. Poole: I take it, your Honor, that this proceeding is going over until Monday anyway.

The Court: It will apparently have to, yes.

Mr. Poole: And that being so, over the week-end I think we will have an opportunity to examine the document carefully.

The Court: Yes. [403]

Mr. Gladstein: You can make that chart up over the week-end.

Mr. Poole: I think we can.

By Mr. Gladstein:

Q. Mr. Anderson, how many employees work on this week-end sugar that you were testifying about? A. Week-end sugar?

Q. Yes, you called it what? A. Mesquite.

Q. Yes.

A. Well, unless the sugar is being dried, there are essentially no workers working on the sugar. I pointed out that at times it is necessary to dry sugar during the week-end.

Q. That would be rare and infrequent?

A. Yes.

Q. And generally and in connection with this week-end sugar, let's use that expression, if you understand me, none of the operations and activities which usually and normally take place in connection with the processing of sugar are taking place during the week-end shutdown, isn't that true?

(Testimony of John William Anderson.)

A. That is true. The process in the crystal-lizers goes on throughout the week, including the week-end.

Q. Now, what ratio does this small portion—I think [404] you described it as a small portion—of sugar that is still in the machines—isn't that right?—during the week-end?

A. Well, it is not a small portion. It is a low grade sugar.

Q. Low grade sugar? What ratio does it bear to the average weekly output of sugar in the mill?

The Court: Now, you mean this that is dealt with by employees?

Mr. Gladstein: Yes.

The Court: The witness spoke about a processing that goes on, natural processing that goes on. I don't want him confused between natural processing, chemical reaction and crystallization, and so forth, with the men employed in drying out the sugar.

The Witness: In other words, this sugar is not—this mesquite when it is put through the centrifugals is not sugar that goes into commerce. It is used as syrup for the high-grade, what we call high-grade sugar, which is the raw sugar that goes to the market.

Q. So that in no sense is this week-end sugar any portion of the normal routine sugar processing operations and output of the mill, isn't that correct?

A. I don't believe that is correct.

Q. What is incorrect about it?

(Testimony of John William Anderson.)

A. Well, we do process the low grade sugar throughout [405] the week. It is used for the making up of the high-grade sugar. We are trying to recover sugar from the molasses.

Mr. Poole: Your Honor, that is described fully in the stipulation.

By Mr. Gladstein:

Q. Now, what percentage or ratio does that low-grade sugar bear to the total output?

A. Well, I don't know that you could put it in terms of percentage because it is a different—it is not the same product that is marketed.

Q. All right.

A. I might say that I think normally the sugar is held approximately two weeks in these crystal-lizers. Some is being drawn off all the time while we are making the high-grade sugars.

Q. Now, you use a grab in your fields, don't you, to load the cane into cars, is that right?

A. Yes.

Q. Now, that machine is used for two purposes, isn't it?

A. It is used for loading the cane into the cars.

Q. All right.

A. Grabbing it from the ground and loading it into the cars.

Q. That's right. And in doing that it partially [406] harvests and partially loads, isn't that right?

Mr. Poole: I object, your Honor, because there's been nothing here to establish the proposition that harvesting is just grabbing. In fact, the position

(Testimony of John William Anderson.)

that I take, and as I will show in my oral argument, harvesting is not only the cutting or the picking of the horticultural and agricultural commodity but it means the ingathering of it, placing it in storage, and I object to the form of the question.

Mr. Gladstein: I will take a ruling on it.

The Court: I think that it should be permitted. You are going to argue that and to show just what you conceive to be the operation of harvesting, but the details that are involved, there may be a contest about that, and I think it is proper for the Court to know all the details of the operation.

Mr. Poole: Well, I don't object to you knowing all the details of the operation, but I do object to the use of the term harvesting as being just descriptive of the picking up of the standing cane. He is using it in that sense.

The Court: Well, that would be harvesting so far as that operation goes.

Mr. Poole: And he says as opposed to loading that he implies it is not harvesting.

Mr. Gladstein: Well, I'll change the question.

Q. Mr. Anderson, that machine is used among other purposes for the purpose of clearing a pathway or roadbed upon which the portable tracks may be laid, that is true, isn't it?

A. Only very occasionally. Normally that job is done by the rake.

Q. All right. And in connection with the use of that grab, they are men who are cutting the cane, too, isn't that true?

(Testimony of John William Anderson.)

A. They are trimming the stubble.

Q. That grab will pull cane out of the ground and then dump the cane in little piles, wouldn't it, isn't that the operation?

A. That's true to some extent, although the same machine puts the cane on to the cars.

Q. Well, sometimes it is that way and sometimes the machine comes back to the piles, grabs the piles and loads the pile into a railroad car or truck, isn't that correct?

A. They may do that.

The Court: This is outside of the point but I wish someone would tell me if you grab the cane out of the ground by the roots what becomes of the ratoon prospect?

Mr. Poole: That is fully described in the stipulation.

The Court: It is?

Mr. Poole: Showing how it is necessary to realine [408] the cane stubble after this harvesting process.

The Court: Oh, after this.

Mr. Poole: I am perfectly willing to have this witness go ahead.

The Court: Well, that will be all right. I was just wondering about that. Go ahead.

Mr. Poole: Are you through?

Mr. Gladstein: That's all I have.

Redirect Examination

By Mr. Poole:

Q. Mr. Anderson, I would like to ask you a few questions with respect to the harvesting operation

(Testimony of John William Anderson.)

I think that there has been some misunderstanding as a result of statements that have been made both by Mr. Hall and yourself as to the so-called piling of cane. Now, first, isn't it true that the greater portion of the cane is picked up by grab while the cane is in a standing position and loaded directly on or into the cane car? A. That's correct.

Q. And it is also true that they bulldoze cane by rake to form a lane upon which the portable track is placed and that that cane is bulldozed out from under electric lines and out of the corners as piled, and that those piles in turn are picked up by the grab and crane and placed in cane cars?

A. That's correct. Even under those piles made by [409] the rake on the grab that handles that pile, he still has to sever the cane that is under the pile and sever that from the ground.

Q. I am not quite sure I quite follow you there. If the cane has been bulldozed, isn't it loose from the ground?

A. That portion which has been bulldozed is loose. But he deposits his rake load of cane on top of some cane that has not been severed.

Q. I see. So at all times he is also picking up cane that has not been severed from the ground?

A. That's right.

Q. And placing that cane, as well as other cane that may have been bulldozed there in the making of these lanes for the portable track and in out of the way corners into the cane cars?

A. That's right.

(Testimony of John William Anderson.)

Recross-Examination

By Mr. Gladstein:

Q. The grabs and piling rakes are used, then, for piling of cane, is that right?

A. Well, the primary function of the rake is to clear the lane.

Q. Well, they use it for piling, don't they?

A. Only occasionally. That is not the normal practice. On other plantations it is, but not at Waialua. [410]

Q. Is any hand-piling done?

A. Not any longer.

Q. Used to?

A. Several years ago, about 1938, we were still hand-piling to some extent.

Q. And there's still hand-piling in the industry here, isn't there, to some extent?

A. I haven't seen any in the last couple of years that I can recall.

Q. The advance of civilization.

Mr. Gladstein: I have no further questions.

Mr. Poole: I should like to ask one further question on piling.

By Mr. Poole:

Q. Such piling as is done, is it in the nature of so-called windrow?

A. It is not a windrow. What happens is between two tracks, for instance.

Q. Between two portable tracks?

A. Take the area between two portable tracks,

(Testimony of John William Anderson.)

the first thing that we do is to put a loading crane in the middle to throw the cane to either side from that middle strip.

Q. Yes?

A. Because the boom cannot reach from the middle to [411] the track. And then that same machine will normally come back alongside of the track and complete the grabbing of the cane adjacent to the track and loading the cane that it had previously grabbed in that first swipe through the middle of the track there, load that all on to the cane cars.

Q. In other words, there is no huge pile of cane as a result of any rake or bulldozing operation?

A. That is not the practice out at our place. We do pass the cane from the machine going down the center. He casts half his pile one way and half the other way normally and then he comes alongside of the track and loads all of the cane there on to the track. And he'd have to go over to the next track and do the same process over there.

Mr. Gladstein: I do have another question.

By Mr. Gladstein:

Q. Mr. Anderson, your Company is associated or connected with one of the factors in Hawaii, is it not?

A. That's correct.

Q. And that factor is which one?

A. Castle and Cooke, Limited.

Q. And your Company as such and Castle and Cooke as such are both members of the H.S.P.A., are they not?

(Testimony of John William Anderson.)

Mr. Poole: I object to this line of examination, your Honor. I don't see the purpose of it. If this were [412] a different type of proceeding involving such issues it might be relevant, but I certainly don't see it here.

The Court: What is the purpose of connecting the Plaintiff up with the H.S.P.A.?

Mr. Gladstein: It is for the purpose, your Honor, of showing that the sugar industry in Hawaii is a very highly integrated one as a manufacturing industry which winds up in the refining of sugar at Crockett, San Francisco, mainly Crockett, where it is done by a Company that is wholly-owned and controlled by the Plaintiff in this case and the other members of the H.S.P.A. Now, I therefore feel that this evidence is valid and material in support of my theory. Your Honor must bear in mind that when you are going to be applying this law, you will be considering the legislative history of the Act and you will be considering the problems that are raised in the light of what Congress said as to whom it had in mind when it was going to exempt people from the applicability of this law. And it is my contention that this very unique industry is not the kind of farming operation and not the kind of sugar processor that Congress had in mind when it was giving exemption, and that we ought to have these facts in the record so that the true character of the industry may appear in it.

Mr. Poole: But I again voice my objection. From the very beginning Mr. Gladstein has sought

(Testimony of John William Anderson.)

to conduct this law [413] suit on the basis that each member of the sugar industry was before the Court as a party. And he is doing the same here. And he is seeking to get in what in his judgment is prejudicial evidence. I don't think that it is, but I think that it is irrelevant and that we are continuing to clutter the record here with a lot of matters that don't advance this cause any at all.

Mr. Gladstein: Well, I will confine my questions to the Waialua Company, if that's the point of the objection, and I will withdraw the last question and rephrase it, and I will ask the witness whether it isn't a fact that the Company, Waialua Company, is a member of the H.S.P.A. That's true, isn't it?

Mr. Poole: I object to the question.

The Court: Overruled.

Mr. Gladstein: Will you answer, please?

A. As far as I know, the Company is a member.

Q. And it is also true, isn't it, Mr. Anderson, that the Waialua Company, together with other plantations in the Territory who are also members of the H.S.P.A., operate the C. and H. Refinery at Crockett, California, isn't that true?

A. I don't know that absolutely, although that is my understanding.

Mr. Poole: Your Honor, I object and ask that the [414] question and the answer be stricken.

The Court: It may be stricken.

Mr. Gladstein: I think that's all.

By Mr. Poole:

Q. Mr. Anderson, I want to direct your atten-

(Testimony of John William Anderson.)

tion to the job analysis that you stated the Plaintiff in this case assisted in working up. Would you tell me what the purpose of this particular analysis was?

A. The purpose of that particular project was to assist in matching the jobs, the various personnel were doing, with the job classification manual which was agreed to in the negotiations last fall. The job classification manual defines different jobs and assigns job, job titles and labor grades, and we developed those job descriptions to assist in matching the jobs, the jobs the employees were actually doing against the job definitions in the classification manual.

Q. Yes, but what was the ultimate purpose? Was the ultimate purpose to make more uniform the compensation that was being paid employees for similar work?

Mr. Gladstein: I think that's immaterial. I object to it. The only question involved here is whether that job analysis is an accurate statement of the facts which it purports to set forth and not whether it was for the purpose of making wage rates more uniform or less uniform. [415]

Mr. Poole: No, I think your Honor, that this is a most relevant question because it determines the light in which this particular analysis was made, prepared. And as such, it will color the document and indicate the particular facts that are being emphasized.

The Court: Well, as I get it, the union and the

(Testimony of John William Anderson.)

Company in negotiations, the union presented a job classification of its own, did it not?

The Witness: The industry did.

The Court: Or the industry did. And that classification entered into your negotiations with the union?

The Witness: That's correct, as part of the contract.

The Court: Now, you say this was set up to make it more definite or detailed or what?

The Witness: To enable us to more accurately place the man on the job that he was supposed to do in accordance with the manual. For instance, in the new manual the job title may have been one particular title, and in our previous practice perhaps he was called something else. Now, in order to determine the proper assignment of the job title to the man, it was necessary to describe the jobs to insure we are doing it correctly.

The Court: So that the Company prepared this and then made the employees familiar with this, did they?

The Witness: That's correct. And we matched up the [416] job description with the job definition in the classification manual.

The Court: Well, isn't that all there is to it?

Mr. Poole: I think that he has given the answer. I think he has fully stated the purpose of the analysis.

The Court: Well, I believe that I understand it.

(Testimony of John William Anderson.)

By Mr. Poole:

Q. Mr. Anderson, would you say that as of to-day, in its amended form—and I think you did indicate that there were some amendments—it accurately reflects what the employees are doing?

A. There are undoubtedly further amendments that perhaps are required even as of this moment. I think a set of job descriptions on a Company of our size would have to be continually revised as the jobs are changed. I mean, it is a never-ending job.

Q. In other words, from time to time the particular duties that are given the employee change irrespective of the way his job is set up?

A. That's correct. We get new machinery, for instance, or we eliminate jobs for various reasons, so that those jobs, those job descriptions have to be revised continually.

Mr. Poole: No further questions.

Mr. Gladstein: No questions.

(Witness excused.) [417]

The Court: Do you have any other witness?

Mr. Poole: No, no further witnesses.

The Court: And you are ready to rest now?

Mr. Poole: Yes, the Plaintiff rests.

The Court: And the next thing, then, will be the argument. Now, you asked for a chart, a coordination of these particular—

Mr. Poole: I shall try and have a chart ready for the Court Monday morning at nine o'clock.

The Court: Well, we may just as well adjourn

the case, then, until Monday morning at nine o'clock.

Mr. Poole: Well, that's what I am suggesting, your Honor.

The Court: Following any preliminaries of whatever time may be required in connection with the outstanding matter, you will be ready for argument then at that time?

Mr. Poole: That is all right.

Mr. Gladstein: Yes.

The Court: All right. This case is adjourned until Monday morning next at nine o'clock.

(The Court adjourned at 11:55 o'clock, a.m.)

Honolulu, T. H., September 22, 1947

The Clerk: Civil No. 787, Waialua Agricultural Company versus Ciraco Meneja and others, for further trial.

Mr. Poole: Ready.

Mr. Gladstein: Ready. This is a continued examination of Mr. Anderson who over the week-end was supposed to prepare a chart.

JOHN WILLIAM ANDERSON,
a witness in behalf of the Plaintiff, having previously been sworn, resumed and testified further as follows:

Recross-Examination
(Continued)

By Mr. Gladstein:

Q. Mr. Anderson, did you make such a chart?

A. Yes, I did.

(Testimony of John William Anderson.)

The Clerk: Defendants' Exhibit C for identification.

Q. Mr. Anderson, I show you a two-page document which has been marked "Defendants' Exhibit C for identification." Is that the chart which you prepared over the week-end? A. It is.

Q. Will you explain the contents of that chart and how you prepared it, from what sources and what the chart represents? [419]

A. The chart shows the number in the stipulation, that is, in the stipulation we have numbers preceding each person whose job is described. We also have the name of the person in the stipulation.

Q. When you refer to the stipulation, you mean the stipulation that is on file in this case?

A. Yes. We have the job title in the stipulation. We also have the job title in the Waialua Agricultural Company job descriptions, which is in that exhibit which you hold.

Q. When you are referring to the exhibit which I hold you are referring to Defendants' Exhibit No. 2 in evidence?

A. That's correct. We have tabbed in that same exhibit the number corresponding to the number in the stipulation, that is, the job in the Waialua job descriptions matching the job pertaining to the named defendant in the stipulation.

Q. Let's see if we can illustrate that. For example, the first worker who was referred to in the stipulation on file in this case bears number 39, and his name is—what is his name there?

(Testimony of John William Anderson.)

A. Ciraco Maneja.

Q. Maneja. By the way, that employee and his duties, while bearing the number 39 in the stipulation, bear the [420] number 38 in the complaint on file, isn't that right?

A. I believe so. There's a difference of one.

Q. And in each instance the number used in the stipulation is one higher than the number used in the complaint, and you have used the number in the stipulation, is that right?

A. That's correct.

Q. Now, would you illustrate, take employee 39, Maneja, and indicate to us how you went about determining which page or pages in Defendants' Exhibit 2 in evidence should be referred to in Defendants' C for identification?

A. Our industrial relations department took this document on Saturday and inasmuch as they were present at the time the jobs in our job description manual were matched against the H.S.P.A. classification manual, they read over the descriptions in the stipulation and picked out the job in the job description manual.

Q. And in some instance it is true, is it not, Mr. Anderson, that the duties performed by an employee who is named and described in the stipulation would require the tabbing of three or four pages in Defendants' Exhibit 2 in evidence in order to get a complete statement of his duties, isn't that right?

A. Yes, that's correct.

(Testimony of John William Anderson.)

Mr. Poole: Would you have Mr. Anderson describe the [421] particular employee defendant's work that required a reference to more than one job?

Mr. Gladstein: Would you do that?

Mr. Poole: Otherwise it might be confusing to the Court.

A. Well, for instance, number 54, Pedro Dum-lao, he is labeled as a cane carrier in the stipulation. We have him covered under 54 here in four different jobs. We have him as a mill aid, uncouple man; mill aid, uncoupleup man; mill aid, wash carrier man; and mill aid, rock watchman. Those jobs are all together. They are listed on this summary. They are all together in the job description.

The Court: Rock what?

The Witness: Rock watchman.

Q. The summary you have just referred to is Defendants' C for identification?

A. That's correct.

Q. Do you have other instances with more than one page in Defendants' C for identification that had to be used to indicate the jobs of an employee involved in this case?

A. That's the only instance.

Q. In other cases one page sufficed?

A. Well, it may run over one page but each page shows the job title corresponding to the job title listed [422] here.

Q. So that by reference to the chart, Defend-

(Testimony of John William Anderson.)

ants' C for identification, an exact determination can be made as to how many pages of Defendants' 2 in evidence are required to indicate the job of the employee that you are concerned with, is that right?

A. I don't believe you can tell how many pages—what I mean to say is that this particular page here, for instance, is a job title listed here as mill aid, uncouple man, and——

The Court: Does that mean uncouple the cars that come in?

The Witness: That's correct.

The Court: And other times he couples them up again?

The Witness: That's correct. The duties of the mill aid, couple-up man are listed separately upon this separate sheet. Now, there are, I believe, a few cases where the job description of a particular job may run over the one page, but it's easily identified here by the fact that each job is listed by title.

Q. One more question on this. This is a fact, is it not, Mr. Anderson, that Defendants' 2 in evidence contains job descriptions for jobs that are different from and outside of the scope of jobs set forth in the stipulation?

A. That's correct. For instance, in some of the testimony it was indicated that an individual may on [423] occasions cut firewood as an occasional duty. We have not covered that in our job descriptions of the particular tractor driver who may be

(Testimony of John William Anderson.)

concerned because that is not the duty for which he is——

Q. Primarily hired?

A. ——primarily hired.

Q. I had also in mind that the stipulation sets forth the duties of a certain given number of jobs, approximately 45 or 47, and it is a fact that Defendants' Exhibit 2 in evidence sets forth the duties of many more than that number, isn't that true?

A. That's correct. We have in this document here, which is Exhibit No. 2, all of the jobs on the plantation which we have described. And I would say that probably somewhere around two hundred jobs or so in this manual here, whereas in the stipulation they list some forty odd.

Mr. Poole: Forty-seven.

The Court: Did I understand you to say that even then that doesn't define the wood cutting or gathering?

The Witness: I don't—I am reasonably sure that we do not have the duties of a firewood chopper listed in here because we did not have anyone assigned to that job normally. It is just more or less an off season.

The Court: Incidental?

The Witness: That's correct. [424]

Mr. Gladstein: I will offer Defendants' C for identification in evidence, your Honor.

The Court: That's Exhibit 3?

(Testimony of John William Anderson.)

The Clerk: Yes, your Honor, C for identification is now 3 in evidence.

The Court: By way of description, that's a job classification schedule?

Mr. Gladstein: It's a two-page chart or table.

The Witness: Chart.

Mr. Gladstein: It is a comparative table consisting of two pages. Wouldn't that be the way to describe it?

The Witness: Yes.

(The document previously marked "Defendants' Exhibit C for identification" was received in evidence as "Defendants' Exhibit No. 3.")

Q. Now, Mr. Anderson, would you take Defendants' 3 in evidence and go through it, naming, as you do, those employees who at present receive overtime pay at one and one-half times the regular rate for hours in excess of 40 during any particular work week, indicating particularly whether the employee in that who does receive overtime gets it during the grinding season or during the off season alone or at what particular periods this happens?

Mr. Poole: I think I am going to take an objection to that question, your Honor. I'd like to hear Mr. Gladstein [425] indicate just what he thinks is relevant and pertinent to in the issue we have in this case, as to whether or not a particular employee may be paid overtime and under what conditions at the present time.

(Testimony of John William Anderson.)

Mr. Gladstein: Yes, I will be very happy to do that. In the stipulation that is on file, your Honor, on page 6-a there is a statement of fact with respect to the overtime compensation that is paid to employees of this Company after 40 hours a week. Part of that statement is to this effect, that since October 4, 1943, employees in the mill and in the allied service shops have been paid time and one-half during the off season for all hours worked in excess of 40 per week. Now, I submit that that, although it is a statement of fact, is somewhat general, and since, as I understand it, Defendants' 3 in evidence refers to employees in part at least who are in the mill or who are in allied service shops, it would be important and material to have this witness indicate which of those employees fall within the statement of fact that is contained on page 6-a of the stipulation. And also which, if any, of the employees receive overtime beyond the off season, if any did. In other words, by the very fact that we have this statement in the stipulation, both parties in effect concede that it is a fact, a statement of fact, which is material in the case, and it is now evidence in this case. But I submit that left [426] in this state it is a little vague and general and that we ought to button this up with specific testimony from the witness taken from this chart.

Mr. Poole: Your Honor, I made this objection primarily to highlight what I think may be involved

(Testimony of John William Anderson.)

in the argument that is going to follow from the evidence given by Mr. Anderson. As I view this case, we have a declaratory judgment action here to determine whether or not specifically named employees are subject to the overtime provisions of the Act. There is a controversy on it between the particular employees in the legal sense and the Plaintiff as to whether or not the overtime provisions apply. Now, it makes no difference as to what employees may be paid overtime at the present time. So as I view it, it is completely irrelevant as to what the existing practice is. And I think that the witness should not be allowed to go into these ramifications. It is true, as Mr. Gladstein has pointed out, the stipulation did in a general way indicate where overtime is paid, and under what circumstances. Why it was being paid, the stipulation does not explain. And I think that it is completely irrelevant here to go into the question as to whether or not any of these defendant employees are presently receiving overtime. And it would mislead your Honor if that was the basis of your ultimate determination. I want to make that point at the present time. [427]

Mr. Gladstein: I think there is one more reason for the admissibility of this evidence, your Honor. and that is, we are asking in our answer in the cross-complaint for an accounting, if the judgment is in favor of any of our employees, and therefore the evidence would be material on that score to in-

(Testimony of John William Anderson.)

dicates which employees already are receiving overtime and therefore aren't entitled to any.

Mr. Poole: But your Honor, I admit that when we come to try the provisions of the claims made by the Defendants in this case, that it is material. There is no question about that. Should you hold and be sustained in finding that some of the employees who are not now receiving overtime should have received it in the past.

The Court: Point out to me where in the stipulation the language is used that you say?

Mr. Gladstein: Page 6-a, paragraph 3.

The Court: Oh, 6-a.

Mr. Gladstein: Of the stipulation, paragraph 3.

The Court: Objection overruled.

Mr. Gladstein: Will you answer the question, Mr. Anderson?

A. At the present time we are paying overtime the year round for hours in excess of 40 to Yack Chun Lee, No. 83 in the stipulation. Then in the—if I may see the stipulation I'd like to determine whether or not the stipulation [428] refers to moving of cars of sugar to the O. R. & L. track in No. 51.

Q. No. 51?

A. It refers that to—in other work weeks he is engaged exclusively in hauling freight cars to the—"In other work weeks he is engaged exclusively in hauling rail cars loaded with plantation freight from the O. R. & L. spur to plantation yard

(Testimony of John William Anderson.)

and warehouses, and in removing rail cars loaded with sugar and molasses from the sugar and molasses loading stations of the plantation to O. R. & L. siding." Then that would apply to No. 51 in the stipulation.

Q. That is, he receives overtime after 40 hours per week throughout the year?

A. When he is doing that type of activity. There are some others, now, who receive overtime for hours in excess of 40 during the off season. I will try to identify those. No. 54—I'd like to say in this connection that although I will identify these persons who normally would get the overtime in the off season for hours in excess of 40, they may not be assigned to duties in the repair of the mill on certain occasions. I would say normally these persons would be engaged in such activity but occasionally they may be assigned to duties away from the mill, and in those cases they would not be eligible for overtime: No. 55, No. 57, 58, 59, 60, 61, 62, 63, 64, 65. I'd like to mention that [429] in the so-called allied shops that, although most of the machine shop and welding shop employees are used in the mill repairs in the off season and therefore eligible for overtime for hours in excess of 40 in those work weeks, that occasionally they are assigned other work having no connection with the machine shop, and if their activities for the week are exclusively on non-mill repairs they would not be paid the overtime for the hours in excess of 40.

(Testimony of John William Anderson.)

Therefore employees 65, 67 would come under that category.

Now, here are some others who have occasionally, very occasionally may perform some work in connection with the mill repairs: Employees 68, 69, 76, 77, 78, 86, and normally—add 75 to that also—employee 80 normally works in the warehouse in the off season. I think it is so indicated in the stipulation, and therefore he would be paid for overtime for hours in excess of 40. I believe that covers it.

Q. That covers the list? A. Yes.

Q. The last group of numbers, about a half dozen of them that you said occasionally work in mill repair, when they do so they receive overtime after 40 hours? A. That's correct.

Mr. Poole: Did he say that or did he say that they received overtime during the dead season or off season?

The Witness: No, they receive overtime for the work, [430] I mean for hours in excess of 40 for the work weeks in which they do work in connection with the factory repairs.

Mr. Poole: During the grinding season?

The Witness: During the off season.

Mr. Poole: Just during the off season?

The Witness: Just during the off season.

Mr. Poole: I don't think you made that clear.

The Witness: Well, perhaps I didn't make myself clear and I will attempt to do so. We are no

(Testimony of John William Anderson.)

paying overtime for hours in excess of 40 to any of the employees in the factory and the allied shops during the grinding season.

By Mr. Gladstein:

Q. In other words, there are only two, I think, of the employees on that chart, Defendants' 3 in evidence, who do receive overtime for hours after 40 each week throughout the year regardless of whether the season is grinding or off season?

A. The only two that I recognize, that is, No. 51 and 83——

Q. There are others but they don't appear on the chart?

A. That's correct, there are other employees in the warehouse, for instance.

The Court: Eighty-three you said, 51 and 83?

The Witness: Yes, sir. I might point out also that in [431] connection with employee No. 51, I think I have mentioned it before but I'd like to point out again that he is eligible for overtime for hours in excess of 40 only in those work weeks in which he is handling the freight from the O. R. and L. tracks to and from our warehouse.

Q. That is, when he is working as a locomotive driver?

A. No, he is a locomotive driver most of the year, but he is only handling the freight from the O. R. and L. tracks, to and from the O. R. & L. tracks on certain work weeks, and he is eligible for that overtime only on those work weeks.

(Testimony of John William Anderson.)

Mr. Gladstein: That's all the questions that I have, Mr. Anderson.

Mr. Poole: I just want to summarize what I think you stated.

By Mr. Poole:

Q. Now, with respect to the employees who work in the mill or who do any repair work in connection with the mill, there is no overtime paid except during the off season?

A. That's correct.

Q. But during the off season you pay time and a half for all hours in excess of 40?

A. That's correct.

Q. To those particular employees? Now, except for certain isolated instances which are referred to in the [432] stipulation, you do not pay any overtime compensation to any other employees working on the plantation whose duties are not directly connected with the operation of the mill or the maintenance and repair of the mill, and those isolated instances are certain employees working in warehousing and employees working in the central office, is that statement correct?

A. And I don't believe you covered the locomotive.

Q. The locomotive engineer who upon occasion in certain work weeks will haul supplies from the O. R. and L. to the warehouse in the plantation and other work weeks will haul sugar and molasses from the mill to the O. R. and L.?

Testimony of John William Anderson.)

A. That's correct.

Q. That's correct?

A. I'd like to clarify your first statement a little. You mentioned no overtime. That should be qualified to the extent that we do not pay overtime for hours in excess of 40. But we do pay overtime for hours in excess of 48 in all cases.

Q. In other words, under the Territorial Law of Hawaii, you are required to pay time and one-half for all hours in excess of 48 irrespective of whether the employee may be agricultural or industrial or in what he is engaged?

A. I believe that that is the case. But in any event it is a contractual obligation also. [433]

Mr. Poole: I see. No further questions.

By Mr. Gladstein:

Q. Generally speaking, how many workers in the warehouse throughout the year over-all receive overtime for hours in excess of 40 per week, approximately? A. I believe about 16.

Q. And what is the figure for the employees in the central office who similarly receive overtime pay at the rate of time and a half regular rate per hours in excess of 40 per week?

A. It would be approximately similar number, I believe.

Q. In the use of the word "overtime" throughout your testimony, this has been true, hasn't it, Mr. Anderson, that when you said "we do" or "do

(Testimony of John William Anderson.)

not pay overtime" you were referring to overtime as a rate of pay which is one and one-half times the regular, is that right? A. That's right.

Mr. Gladstein: That's all.

(Witness excused.)

The Court: Now, how much time do you estimate you will require for argument?

Mr. Gladstein: One more matter before the argument, your Honor, and that is, the pages from the sugar manual of the Hawaiian Sugar Planters Association. I have been talking with Mr. Poole about this. The information I want [434] to offer in evidence can be offered in one of two ways. I can either ask the Court to issue a subpoena for the head of the H.S.P.A. and have him testify, or Mr. Poole can simply stipulate with me that the statistical data and other statements of fact contained in the pages which I want to offer in evidence are reasonably accurate and substantially true and correct. He may object, of course, as to their materiality but I am asking him merely to stipulate to certain pages as being statements of fact, reserving to him the right to object that these facts don't belong in this case. I have already indicated to him the pages of this manual that I want to offer, and I will indicate that to the Court now and make that offer of these pages as evidence and indicate what they contain.

I want to offer from this manual a page which is numbered nine and which is entitled "Organization." This continues to another page which sets

forth in tabular form the organizational set-up of the plantations, including the Waialua Company. I also want to offer page 10, which is a chart setting forth the organization of the particular plantation and referring to each and every plantation, including the Plaintiff Company. Then I want to offer page 17, beginning with that portion entitled "Refining of Hawaiian Raw Sugar," and page 18 which is entitled "Railroad System" and sets forth the mileage of track, the number of cars, engines, [435] and so forth, operated by the various companies. And I will ask Mr. Poole to indicate whether he is willing to make a stipulation, reserving his right to object, if he wants to, or whether I will have to subpoena someone from the H.S.P.A.

Mr. Poole: Your Honor, I take the position which I have tried to make clear throughout this trial, that none of the information which has to do with the general character of the plantations as such is indicated here, that is, information relating to the integration of the industry or to members of the plantations in the H.S.P.A., or any other information of that character is at all relevant. I make the same objection here. I see no relevancy whatsoever between the issues that your Honor is going to have to decide and what Mr. Gladstein now wants to put into the record.

I have a further objection, and that is, that much of this information is incorrect. It isn't even substantially correct. I want to call your attention to page 18. On that page you have a listing of the plantations and the railroad trackage which each

plantation has, the number of cars, and the number of locomotive engines, and the value. It is my understanding that that is substantially incorrect, that today several of the plantations have either dispensed with the railroad system of transportation or are doing so very rapidly, and it would give a completely inaccurate picture [436] to have that introduced in evidence as a fact. But I should like first to have a ruling from your Honor as to whether or not you regard this as relevant. And I repeat, it has nothing to do with whether the particular activity of the employees who have been named as Defendants in this suit and the Waialua Plantation are engaged in agriculture or engaged in the processing of cane.

The Court: Well, does Waialua depart from these general plans of organization, corporate organization?

Mr. Poole: They do to some extent.

The Court: Plantation organization?

Mr. Poole: I might say to your Honor, the stipulation carries the organizational set-up that we have at Waialua, and it is not fully in accordance with that organizational chart that you see there.

Mr. Gladstein: I don't understand that any departure is substantial, Mr. Poole. Do you claim that?

The Court: What is said to be the date of this? What time was this publication applicable in a descriptive way?

Mr. Poole: Some pages have been revised as of

1946; other pages are as much out-of-date as five years.

The Court: Who is responsible for this sugar manual?

Mr. Poole: The H.S.P.A. published it. That is indicated on the first page.

The Court: Is this publication for general public [437] information or for the information generally of the plantations which appear to be more or less cooperative?

Mr. Poole: I can't answer that question. I don't think that it's been distributed generally.

Mr. Gladstein: I have two copies.

Mr. Poole: Your Honor, also I think that if it goes in it ought to go in in its entirety. However, if it goes in in its entirety it presents a false picture. There is considerable in there about the perquisite system. The perquisite system has been abolished, as the stipulation points out. And what we are doing here is putting into the record a lot of material that is not only irrelevant but it is out-of-date.

Mr. Gladstein: Well, I don't want to put in material that is either irrelevant or out-of-date, and I am perfectly willing to agree that if page 17, the one that contains the trackage data, page 18—

The Court: Is that sofar as Waialua is concerned?

Mr. Gladstein: Yes.

The Court: The railway system description, with the exception of value, is that accurate?

Mr. Poole: I don't know but I will check on it

in a minute. I think that it is substantially correct in respect to Waialua.

Mr. Gladstein: I want to suggest that there is another [438] reason why this is material, now that counsel has indicated that the material seems to be accurate, and that is, that in the stipulation of fact and in the complaint we have statements that go beyond the Waialua Company. For example, we have statements of fact dealing with the percentage of output, not only of Waialua but of all the Companies. We have statements of fact with respect to the off season, not only dealing with Waialua but dealing with all of the plantations. We have numerous statements of fact concerning all of the other Companies who are members of the H.S.P.A. I think that it is material to complete this picture by getting the information into the record that I am offering here, and I take it that we must assume that Mr. Poole is not going to claim that the H.S.P.A., the association to which his Company belongs and which he represents here, puts out something that they wouldn't vouch for. That is at least in respect to those parts of it which refer to statistical data.

Mr. Poole: I will go so far as to say at the time it was compiled and published it was correct.

Mr. Gladstein: That's the pages I am referring to?

Mr. Poole: Certainly.

Mr. Gladstein: I think that that is—

Mr. Poole: I don't want to imply to the contrary.

Mr. Gladstein: I think that ought to be sufficient for the purpose of this record. Now, there are other things [439] in this manual, your Honor, that Mr. Poole says ought to be in here if any part is in. But I don't think that's correct. This is a loosely-bound—much of the information contained in this manual, as your Honor will note, has no relationship at all to the sugar industry. As a matter of fact, there is a little history of Hawaii and there is a lot said about legislation, the defense of Hawaii, things of that kind which are not material. There's also quite a bit of puffing in here and advertising on the part of the H.S.P.A. which I think does not properly belong in the category of statement of fact or evidence but rather represents the opinions or conclusions and would not be material. In any case, it does not follow that the admission of the pages which I offer call for the admission of any other parts of this manual.

Mr. Poole: I want to comment upon that, your Honor. You see what my adversary has done. He has gone through this book and he has selected about four pages which he thinks will strengthen his case in the way of prejudicial facts. I don't acknowledge that they do. But that's what he has done. He doesn't want to admit the balance of the manual at all. He opposes that and he says that while—the theories upon which he is trying his case are very broad, but they are not broad enough to include the entire manual but only those particular pages that he wants to put [440] in.

Mr. Gladstein: Well, just for example, your Honor, I happen to be a proponent of statehood for Hawaii; I am very hopeful that Hawaii becomes a

state; but I don't see that the statement on page six regarding the fact that people in Hawaii pay more taxes than 14 states on the mainland has anything to do with this case.

Mr. Poole: I think it has just as much relation as many of the things that you are pointing to.

Mr. Gladstein: I think that is argumentative. I will refer to the facts.

Mr. Poole: Well, it is a factual statement.

Mr. Gladstein: Also there are portions in here where the H.S.P.A. speaks about how kind and good it has been to labor. I submit that that is not material here and not admissible as a statement of fact. I am perfectly willing to let the H.S.P.A. be entitled to its own opinions on that subject but I don't think that its opinions are admissible in evidence any more than my opinions on the same subject might be. And mine, I think, might differ from theirs.

The Court: Will you make it a little clearer, please, just why you want this, these several pages?

Mr. Gladstein: Yes. Page nine, your Honor, and the page which follows, is entitled "Organization." It is out-of-date only so far as I can see with respect to one statement [441] in it, a statement referring to 36 plantations.

Mr. Poole: Thirty-eight.

Mr. Gladstein: No, 36 in the latest revised one. You are looking at an old one and mine is revised as of 8-15-46.

The Court: Each of the 36 plantations?

Mr. Gladstein: Yes, there are 32 instead of 36,

and there may be fewer as time goes on because of consolidation, merger and possibly going out of business of others. But it's still true that there are more than 30, and in any case the reference is to the plantations. Now, there you will find a statement of the functions of the H.S.P.A. and of the factors which represent the various companies, including the Waialua Company. I submit that that is material here to show the manner in which the industry operates. It is material to determine some of the issues that are raised in this case. One of the most important of the issues that your Honor is going to have to decide is going to be the relationship between what is done here in Hawaii and the refining process that takes place in Crockett and the marketing that takes place on the mainland. And your Honor will have to determine what, if any, effect that integration has upon the claims of the Plaintiff Company, and of course all companies, to exemption from the Fair Labor Standards Act. This material, therefore, shows what the organizational [442] set-up and integration is here at Hawaii.

The next page, page 10, which is the chart of plantation organization is substantially correct for all of the plantations, and to the extent that Waialua departs from this chart that departure is shown in the exhibits on file in this case. Page 16, at about the center of that page—

The Court: I don't recall your mentioning 16.

Mr. Gladstein: Seventeen. I'm sorry. Page 17, refining of Hawaiian raw sugar, this, I submit, is

clearly relevant. It carries through the actual operations of Waialua and the other plantations here. It's just as much material as if there had been a refinery set-up here in the Territory. Certainly if that were true we would be entitled to show that, how the unrefined sugar gets from the Waialua Plantation to and into the refinery, what is done about it. The fact is that that refining process takes place on the mainland, but I submit that doesn't make it any different.

Now, the next page is the portion which deals with trackage. I am perfectly willing to agree that to some extent the figures regarding trackage have been undergoing change to the extent that plantations have changed from the railroad form of transportation to other forms, particularly trucking. I don't think it makes any difference, however, because trucking is simply being used as a more efficient [443] method and is a substitute for the railroad system. And these figures as of a relatively recent date, within the last few years, were absolutely correct according to my understanding.

The Court: Did you want to say anything, Mr. Poole? [444]

Mr. Poole at this point objected to the introduction of Defendants' Exhibit No. 4 on the ground that the material that it contained was irrelevant and immaterial to the issues of the case.

The Court: The objection is overruled. The pages in the document are admitted as Exhibit 4.

(The documents referred to were received in evidence as Defendants' Exhibit 4.)

The Court: That is, pages 9, 10, 17 and 18.

The Clerk: Nine, 10, 17 and 18.

The Court: Was there one more?

The Clerk: No, your Honor, that's all.

Mr. Poole: Your Honor, I would like to request a recess of about ten minutes.

The Court: Is this upon the assumption that we are then going to argument?

Mr. Poole: I do not know. It may be necessary for me to call additional witnesses.

The Court: All right, recess for ten minutes.

(A short recess was taken at 10:10 a.m.)

After Recess

Mr. Poole: Your Honor, shortly before recess you asked me how long I thought we required for oral argument. I am a little uncertain but I want to ask for two hours. [446]

The Court: Two hours? Well, now, would it be convenient for you to do it in two sections? I mean that two hours would run us until half past twelve.

Mr. Poole: Yes.

The Court: I assumed that we would take about two hours for luncheon. Would it be convenient to you to stop about half way in your argument and then take the balance up this afternoon, say beginning half past one. And then, Mr. Gladstein, how long do you think you will want?

Mr. Gladstein: About half as long as Mr. Poole

expects to take, which will be one-fourth as long as he does take.

The Court: Then you may get through with yours this afternoon?

Mr. Poole: Well, how long will you allow me this morning under your plan?

The Court: Well, I am not going to put any limit on this argument, any time limit on this argument. I want all the information I can get out of the argument. I want to get all the views and slants that you gentlemen can give me. I know you are both ingenious.

Mr. Poole: Thank you.

The Court: And your full knowledge as to the righteousness of your opposing contentions, I want the benefit of that. If we can knock off at about half past eleven and then again begin about half past one, it would suit me [447] better. I have a tentative engagement during those hours. It is not necessary but tentative.

Mr. Poole: Yes. Well, I should like, if possible, to complete that part of my argument which relates to the application of the agricultural exemption this morning.

The Court: And that will take about an hour?

Mr. Poole: I should think so.

The Court: Well, you may proceed when you are ready.

Mr. Poole: All right.

(Mr. Poole presented the first part of his argument.)

(The Court recessed at 11:33 a.m.)

After Recess

Mr. Gladstein: Before he resumes argument, your Honor, I'd like to introduce a clean and unmarked copy of the document which is in evidence and known as Defendants' Exhibit 1.

The Court: Well, you had another marked copy, and you want to withdraw that?

Mr. Gladstein: Yes, if I may, your Honor.

The Court: And substitute this?

Mr. Gladstein: Yes.

The Court: Do you want to see this, Mr. Poole?

Mr. Poole: I should like to see that.

Mr. Gladstein: A clean copy substituting for the other one. [448]

Mr. Poole: It appears to be a clean copy and I have no objection.

The Court: Very well, the substitution is made. You may proceed when you are ready, Mr. Poole.

(Mr. Poole continued with his argument.)

September 23, 1947

(Mr. Gladstein presented his argument.)

(Mr. Poole presented his concluding argument.)

(The Court adjourned at 10:30 p.m.)

I, Albert Grain, Official Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify that the foregoing is a true and correct transcript of proceedings in Civil No. 787, Waialua Agricultural Company, Ltd., vs. Ciraco Maneja, et al., held in the above-named court on September 18, 19, 22

and 23, 1947, before the Hon. Delbert E. Metzger, Judge.

October 13, 1947.

/s/ ALBERT GRAIN.

[Endorsed]: Filed May 26, 1948. [450]

[Title of District Court and Cause.]

AMENDED ANSWER AND
CROSS-COMPLAINT

Come now the defendants above named and, pursuant to leave of Court first had and obtained, the order therefor having been made at the trial of the above entitled action, and for the purpose of conforming the pleadings on file herein to the proof adduced at said trial, hereby amend the answer on file herein, and file the within pleading as an amendment to said answer and furthermore as a cross-complaint, and allege as follows:

I.

Each and every, all and singular, generally and specifically, the allegations and denials contained in the said answer on file herein are hereby reasserted and incorporated herein by this reference, save and except as modified by the allegations hereinafter set forth and made. [451]

II.

Defendants assert and allege that the exemption contained in § 13(a)(6), hereinafter referred to as the agricultural exemption, applies only to those

tasks and duties of work which are performed immediately and directly in the cultivation and tillage of soil, and the production, cultivation, growing and harvesting of sugar cane; that plaintiff is in no sense a farmer, nor does plaintiff operate a farm, within the meaning of §3(f) of the Fair Labor Standards Act of 1938; that each and every task not performed or connected directly and immediately with, and the energy for which is not directly or immediately expended upon, one or another of the aforementioned processes between cultivation of soil and harvesting of sugar cane, is in no wise within the said agricultural exemption, and by reason thereof employees performing such tasks are in no wise, during work weeks when they so perform such tasks, exempt from application of the wage and hour benefits of the said Act.

III.

Defendants assert and allege that the harvesting of sugar cane completes such agricultural character as may be properly said to exist, by virtue of the definition of "agriculture" within the said Act, in the operations of the plaintiff company, and that said harvesting is completed immediately upon the taking out and separation of sugar cane from the earth; that immediately upon the occurrence of said severance of sugar cane from the earth, whether the same be by cutting, machine or otherwise, a process commences which is in truth and in fact a process of transportation; that where sugar cane is harvested and placed in quantity at points of concentration, the said transportation process com-

mences immediately from and after the said cane reaches such points of concentration in the fields; that where, by reason of mechanization, sugar cane is severed from the soil and placed onto trucks, rail cars, or other means of conveyance, [452] by the same machine or machine process, such method is a combining and integrating of the last stage of harvesting and the first stage of transportation to and toward the mill; that each and every task performed from and after the point of completion of harvesting as hereinbefore described, to and including the bringing into the mill of said sugar cane and the placing of such cane into machines for the commencement of the first operation of sugar processing, is a part of a transportation process, and by reason thereof, is in no wise contained within either the definition of "agriculture" as contained in said Act, nor within the said agricultural exemption, and employees performing any of such tasks so referred to as transportation tasks are, during each and every work week in which they perform such transportation tasks, entitled to all of the wage and hour benefits of the said Act, without exemption or exception.

IV.

Within the mill of plaintiff, there takes place an operation known as the processing of sugar, and defendants assert and allege that the said processing operation commences with the washing of sugar cane, and not before, and by reason thereof, such tasks as are performed within said mill in connection with said sugar cane prior to the washing

hereof do not fall within any exemption provided for by § 7(c) of the said Act, hereinafter referred to as the sugar processing exemption, but to the contrary any tasks performed by employees in said mill at any point prior to the said washing of said sugar cane are fully covered by said Act, and employees performing the same in any work week are fully entitled to the benefits of the wage and hour provisions of the said Act, without exemption or exception.

V.

Defendants concede that certain tasks which are performed within the mill during the grinding season fall within the definition of the said sugar processing exemption. Defendants, [453] however, assert and allege that the only tasks and duties performed within said mill which properly fall within said sugar processing exemption, are those tasks and duties performed directly and immediately in connection with the processing of sugar cane; and by reason thereof, there are many tasks performed within the said mill by employees whose work is not directly or immediately connected with the processing of sugar cane, and such tasks are not exempt under said Act; and furthermore, there are many tasks performed within the said mill which, while connected with the processing of sugar cane in more or less direct and immediate nature, are not exclusively so connected, but to the contrary are connected with other and non-exempt operations, one of many illustrations of which is the work performed in the supplying of power which not

only operates the said mill but also is essential to, and connected with, the transportation phases and processes herein mentioned, as well as other operations conducted by plaintiff, and by reason of said facts employees performing such tasks are in no wise exempt from the law.

VI.

During the twenty-four hour period occurring each week when the mill is shut down and no processing of sugar cane into sugar is occurring, each and every task performed by any employee in such period is not exempt under the said Act, and each such employee is entitled, in each and every work week in which he performs such non-exempt work, and for the whole of such week, to all of the benefits of the wage and hour provisions of the said Act, without exemption or exception, regardless of the fact that during portions of the week when processing does take place, such employee may be performing exempt activities.

VII.

During the so-called "dead" or "off" season, when no processing of sugar cane occurs, each and every activity and duty performed by employees in and about the said mill is not exempt, [454] and employees working in and about said mill during said "off" or "dead" season are all entitled, for the duration of said "off" or "dead" season, to the full benefits of the wage and hour provisions of the said Act, without exemption or exception.

VIII.

During the period when grinding operations are taking place, the processing of sugar cane into sugar is completed when the crystals of sugar are removed from machines into either bins or bags; that from this point onward, and at all stages of work thereafter in the movement of such unrefined sugar through the process of transportation and shipment to the mainland, each and every activity and task performed by employees is not exempt under the said Act, and employees performing any of said tasks are entitled, in each and every work week in which any of such tasks are performed, to the full benefit of the wage and hour provisions of the said Act, without exemption or exception.

IX.

Defendants assert and allege that the plantation village, in which virtually all of plaintiff company's employees live, is and has always been necessary to and directly connected with the performance of plaintiff company's operations, and by reason thereof, the maintenance and repair of the said plantation village and the homes and stores and other buildings therein are necessary to the operation of plaintiff company's plant, and by reason thereof, each and every task and activity performed by workers in connection with the repair and maintenance of homes and other buildings in the said plantation village, or of parts or portions thereof, are tasks and activities necessary to and directly connected with the production by the plaintiff com-

pany of sugar for interstate commerce; that employees performing such tasks are neither exempt from nor not covered by the the said Act, but to the contrary are entitled to all of the benefits of the wage and hour provisions thereof, without exemption or exception. [455]

X.

Save and except as tasks or activities are herein admitted to be within any exemption provision of the said Act, all tasks, activities and work performed by defendants for plaintiff are within the coverage and protection of the said Act, and not within any exemptions contained in said Act.

XI.

Plaintiff company has failed and refused, since January 19, 1946, to compensate the defendants in accordance with the provisions of said Act, and to the contrary plaintiff company has claimed that many of the tasks and duties performed by defendants are either not covered by the said Act or exempt from the said Act, and by reason thereof, work weeks have occurred since January 19, 1946, in which defendants and other employees of plaintiff company have not received, for hours of work in excess of forty per week, compensation at the rate of one and one-half times the regular rate of pay; that by reason thereof plaintiff company has been and now is and continues to be in violation of said Act; and plaintiff company has asserted that it will continue its said practices, and by reason thereof further violations of the said Act will be committed by plaintiff company as aforesaid.

Wherefore, defendants reassert and reallege the prayer contained in the original answer on file herein, save and except as said prayer may be modified by reason of the allegations contained herein; that the Court in rendering judgment specify tasks and duties, rather than employee classifications, which are or are not covered or exempt under the said Act; that judgment be rendered in favor of defendants for unpaid overtime compensation, liquidated damages in amounts equal to such compensation, costs and attorney's fees up to and including the date of judgment or, in the Court's discretion, to a date later [458] than said judgment upon which computations are made to ascertain and determine the amounts of money owed by plaintiff company under such judgment; and for such other relief as may be just and proper.

Dated: October 31, 1947.

/s/ GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

By RICHARD GLADSTEIN,
Attorneys for Defendants.

[Endorsed]: Filed Nov. 3, 1947. [457]

[Title of District Court and Cause.]

ANSWER TO CROSS-COMPLAINT

Comes now the plaintiff above named, by its attorneys Rufus G. Poole and E. C. Moore, and for answer to the Cross-Complaint herein appearing in

work in connection with the repair and maintenance of the plaintiff's houses and related facilities as described in [458] paragraph 35 and other paragraphs of the Complaint.

II.

During all periods of time referred to in paragraph XI of the Amended Answer and Cross-Complaint, all the defendants have been employees "employed in agriculture" within the meaning of Section 13(a)(6) of the Act and therefore have been exempt during all such periods from the overtime provisions of the Act as provided in said Section 13(a)(6).

paragraph XI of defendants' Amended Answer and Cross-Complaint, admits, denies, and alleges as follows:

I.

Plaintiff denies each and every allegation contained in paragraph XI of the Amended Answer and Cross-Complaint except that it admits that (a) it has claimed that many of the tasks and duties performed by defendants are either not covered by the Fair Labor Standards Act (hereinafter referred to as the Act) or are exempt from the Act, (b) plaintiff did not compensate some of the defendants during some of the work-weeks since January 19, 1946, for hours of work in excess of 40 but not in excess of 48 per week, at the rate of one and one-half times their regular rate of pay, and (c) the defendants are within the coverage provisions of the Act save when they are engaged in

III.

During all periods of time referred to in paragraph XI of the Amended Answer and Cross-Complaint all the defendants have been employees of an employer, i.e., the plaintiff which has been engaged during all such periods in the "processing of . . . sugar cane . . . into sugar (but not refined sugar) or into syrup," and by reason thereof, as provided by Section 7(c) of the Act, all the defendants have been exempt during all such periods from the overtime provisions of the Act.

IV.

For the period January 19, 1946, to May 13, 1947, inclusive, the act or omission, if any, of plaintiff to pay the defendants in accordance with the claims of defendants as set forth in paragraph XI of the Amended Answer and Cross-Complaint, was in good faith in conformity with and in reliance on administrative regulations, orders, rulings, approvals, and interpretations of agencies of the United States and in good faith in conformity with and in reliance on administrative practices and enforcement policies of agencies of the United States with respect to the class of employers to which plaintiff belonged. Pursuant to Section 9 of the Portal-to-Portal Act of 1947, therefore, plaintiff is not liable to the defendants or any of them for any act or omission during the period January 19, 1946, to May 13, 1947, inclusive, [459] complained of by defendants.

V.

For the period since May 14, 1947, the act or omission, if any, of plaintiff to pay the defendants in accordance with the claims of defendants as set forth in paragraph XI of the Amended Answer and Cross-Complaint, was in good faith in conformity with and in reliance on written administrative regulations, orders, rulings, approvals, and interpretations of the Administrator of the Wage and Hour Division, U. S. Department of Labor, and in good faith in conformity with and in reliance on administrative practices and enforcement policies of the said Administrator with respect to the class of employers to which plaintiff belonged. Pursuant to Section 10 of the Portal-to-Portal Act of 1947, therefore, plaintiff is not liable to the defendants or any of them for any act or omission during the period since May 14, 1947, complained of by defendants.

VI.

During all periods of time referred to in paragraph XI of the Amended Answer and Cross-Complaint, the act or omission, if any, of plaintiff to pay the defendants in accordance with the claims of defendants as set forth in said paragraph, was in good faith and plaintiff had reasonable grounds for believing that such act or omission was not a violation of the Act as amended. The court therefore, pursuant to Section 11 of the Portal-to-Portal Act of 1947, should in the exercise of its discretion award no liquidated damages to defendants.

VII.

To the extent that the alleged rights of action set forth in paragraph XI of the Amended Answer and Cross-Complaint did not accrue within one year prior to the date of the filing of said Amended Answer and Cross-Complaint, said alleged rights of action are barred by the provisions of Act 174 (Series D-177) [460] of the Session Laws of Hawaii 1945, enacting and incorporating Section 10429.01 into the Revised Laws of Hawaii, 1945.

Wherefore plaintiff prays that defendants take nothing by their Cross-Complaint, that the Cross-Complaint herein be dismissed and that plaintiff have such other and further relief as may be proper in the premises.

Dated November 15, 1947.

/s/ RUFUS G. POOLE,

/s/ E. C. MOORE,

Attorneys for Plaintiff Waialua Agricultural Company, Limited.

I hereby certify that I served a copy of the foregoing Answer to Cross-Complaint upon the attorney for defendants, Richard Gladstein, by sending such copy to him on this date by registered mail, airmail, addressed to him at 240 Montgomery Street, San Francisco, California.

/s/ RUFUS G. POOLE.

November 15, 1947.

[Endorsed]: Filed Nov. 19, 1947. [461]

[Title of District Court and Cause.]

JOINT MOTION FOR SEPARATE TRIAL
PURSUANT TO RULE 42(b)

Plaintiff and defendants jointly move the court for an order directing a separate trial of the issues presented by Paragraph XI of the defendants Amended Answer and Cross-Complaint (counterclaim) and plaintiff's Answer (reply) to said Cross-Complaint (counterclaim), and for a further order directing that such separate trial take place subsequent to the determination by the court of the issues presented by plaintiff's Complaint for declaratory judgment herein and defendants' amended answer thereto. It is respectfully submitted that the allowance of this motion will further the convenience of both the plaintiff and defendants and also the court, because the determination of the issues presented by the plaintiff's complaint for declaratory judgment herein and defendants' amended answer thereto may render unnecessary or considerably abbreviate the trial of the issues for which a separate trial is herein requested. The parties also respectfully call to the court's attention the fact that their respective counsel stipulated in open court on September 23, 1947, that the issues presented by defendants' Cross-Complaint (counterclaim) should not be tried until the court determined the issues presented [462] by the plaintiff's Complaint for declaratory judgment herein and defendants' amended answer to said Complaint.

Wherefore, in furtherance of convenience to the parties and the court, plaintiff and defendants pray that the court order a separate trial of the issues presented by Paragraph XI of the defendants' Amended Answer and Cross-Complaint (counterclaim) and plaintiff's Answer (reply) to said Cross-Complaint (counterclaim), and further order that said separate trial take place subsequent to the determination by the court of the issues presented by plaintiff's Complaint for declaratory judgment herein and defendants' amended answer thereto.

Dated Honolulu, T. H., this 22nd day of March, 1948.

/s/ RUFUS G. POOLE,

/s/ E. C. MOORE,

Attorneys for Plaintiff.

/s/ RICHARD GLADSTEIN,

/s/ MYER C. SYMONDS,

Attorneys for Defendants.

[Endorsed]: Filed March 22, 1948. [463]

[Title of District Court and Cause.]

ORDER GRANTING JOINT MOTION
FOR SEPARATE TRIAL

A Joint Motion having been filed by plaintiff and defendants asking for an order directing a separate trial on certain issues herein, and the said motion having been presented to the court and the court having been fully advised, and good cause appear-

ing for the granting of said motion pursuant to Rule 42(b) of the Rules of Civil Procedure for the District Courts of the United States,

It Is Hereby Ordered that the said motion be granted and the court hereby orders a separate trial of the issues presented by Paragraph XI of the defendants' Amended Answer and Cross-Complaint (counterclaim) and plaintiff's Answer (reply) to said Cross-Complaint (counterclaim); and

It Is Further Ordered that said separate trial shall take place subsequent to the court's determination of the issues presented by plaintiff's Complaint for declaratory judgment herein and defendants' Amended Answer thereto.

Dated Honolulu, T. H., this 22nd day of March, 1948.

/s/ D. E. METZGER,

Judge of the United States District Court for the District of Hawaii.

[Endorsed]: Filed March 22, 1948. [464]

[Title of District Court and Cause.]

FINDINGS WITH CONCLUSIONS

Arising from diverse view, such as to create an actual controversy, of the intent, meaning, and application of certain sections of the Fair Labor Standards Act of 1938, the plaintiff, as a fairly representative plantation of the sugar industry in Hawaii, brought this action by agreement with col-

lective bargaining representatives of certain of its employees, praying for a declaratory judgment to determine its rights under the Act as an Employer, and the rights of the defendant-employees named, as well as all other of its employees engaged in work of a similar kind. The Court is satisfied, after examination, that it has jurisdiction to deal with this matter in a declaratory judgment, under Rule 23(a), Federal Rules of Civil Procedure, and Section 24, as amended, and 274d of the Judicial Code. *Tennessee Coal, Iron & Railroad*, 321 U. S. 590; *Jewell Ridge Coal Corporation*, 325 U. S. 161.

The plaintiff is one of the larger corporations in Hawaii engaged in nearly all the activities necessary to the production of raw sugar and molasses and the marketing of these commodities in the United States. Its cane goes to its own sugar mill and practically all of its raw sugar goes to the California-Hawaiian Refinery at Crockett, California, for further processing and sale as refined sugar.

In September, 1946, it employed in various work on its plantation property 1,144 persons; in years past the number of its employees was twice or more greater. During 1945 it produced 56,193 tons of raw sugar, being the third largest producer in Hawaii. Its farming and factory operations are carried on in the northwestern side of Oahu about thirty miles from Honolulu. It grows and harvests cane on about 9,660 acres of land owned and leased by it. The activities performed in the carrying on

of its entire business are quite numerous and diverse. Among other things they include clearing and preparation of land, preparation and transportation of seed, planting, cultivating, irrigating, fertilizing, spraying weeds with herbicides and cane with insecticides, harvesting, road and railroad building and maintenance, surveying, water development, ditching and ditch and flume tending and upkeep, fencing, reservoir operation and maintenance, water pump operations and pipe line maintenance, machine installation, moving, and operations of various kinds, as passenger conveyances, trucks, tractors, locomotives, bulldozers, grappling and loading cranes and others, railroad operations for various carrying purposes, stores, warehousing and offices, machine shops, service shops, welding shop, blacksmith shop, tinsmith shop, repair shops, electrical shop and the generating and distribution of electric current, carpenter shop, paint shop, plumbing shop, garage and automotive repairs, roundhouse, chemistry laboratory, concrete [466] products plant, stables, lumber yard, firewood gathering and distribution, weighing, unloading and washing cane, removal and distribution of refuse, milling and processing cane into sugar and molasses, warehousing and loading sugar for shipment, handling bagasse and mill waste, repairs and upkeep of many structures, including electric lines, building and repairing dwelling houses of which the company owns 820, maintaining hospital, sanitation work, garbage disposal, street cleaning, tree

pruning, recreation club houses, gymnasium and athletic fields upkeep, together with numerous other activities.

The quality of employees range from hoe-men and common laborers to highly trained artisans and mechanics, surveyors, engineers and technicians, with accountants, cashiers, statisticians, personnel men, overseers, timekeepers and storekeepers.

The farming operations of the plantation are continuous the year around, various activities such as planting, cultivating or harvesting going on in different fields at the same time. Crops come to maturity in from twenty to twenty-four months in different fields, and this is all planned to coordinate with harvesting and milling operations which are suspended about three months each year. Mill operations are on a six-day a week basis and continuous around the clock in three 8-hour shifts; several other activities are largely in two 8-hour shifts; depending on seasons.

The main managerial business of the corporation is conducted through a plantation agency house in Honolulu where most of its officers and directors are centered. The manager, residing on the plantation, is essentially a superintendent of plantation operations and he and his aides plan and direct the timing and coordination of all principal activities, other than those managed by Honolulu officers.

The questions presented are:

1. Are the employee-defendants, and all other employees similarly situated, "employed in agri-

culture” as the term “agriculture” is defined in Section 3(b) of the Act, and therefore exempt from both the minimum wage and overtime provisions of the Act, as set forth in the exemption in Section 13(a)(6) of the Act?

2. If said employees are not so exempt, are any or all of them exempt from the overtime provisions throughout the year, or any part thereof, by virtue of Sec. 7(c) of the Act which provides that “in the case of an employer engaged . . . in the processing . . . sugar cane . . . into sugar (but not refined sugar) or into syrup,” the overtime provisions of the Act (but not the minimum wage provisions) “shall not apply to his employees in any place of employment where he is so engaged?”

3. Are the employee-defendants, and those employees similarly situated, when they are engaged in any one week exclusively in building, repairing or maintaining plantation houses or related domestic facilities, “engaged in commerce or in the production of goods for commerce” as the term “commerce” and “produced” are defined in Section 3(b) and 3(j) of the Act?

Sections and subsections of statutory provisions of the Act which are involved, are as follows:

Section 3(b) “‘Commerce’ means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.”

Section 3(c) “‘State’ means any State of the

United States or the District of Columbia or any Territory or possession of the United States.”

Section 3(f) “ ‘Agriculture’ includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.”

Section 3(j) “ ‘Produced’ means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.”

Section 6 provides for Minimum Wages to be paid to all employees engaged in commerce or in the production of goods for commerce. Minimum wages are not here in controversy.

Section 7(a) provides for Maximum Working Hours for employees who are engaged in commerce or in the production of goods for commerce, except as otherwise provided in this section, and sub-section (c) of the said section provides, "in the case of an employer engaged in the first processing . . . of sugar beets, sugar beet molasses, sugar cane or maple sap into sugar (but not refined sugar) or into syrup, the provisions of sub-section (a) shall not apply to his employees in any place of employment where he is so engaged." [469]

Section 13(a), provides that Sections 6 and 7, as above, of the Act shall not apply with respect to, "(6) any employee employed in agriculture."

The contentions of the plaintiff are:

"a. That all the employee defendants, as well as all other employees of plaintiff similarly situated, are employees 'employed in agriculture' as the term 'agriculture' is defined in Section 3(f) of the Act and that, therefore, all employees are exempt from the overtime provisions of the Act, i.e., Section 7(a), as provided by Section 13(a)(6) of the Act;

"b. That the employee-defendants and any other employees of plaintiff similarly situated, who are engaged in the transportation of sugar cane from the fields to the mill, the processing of sugar cane into raw sugar including the temporary storage and shipment of raw sugar, and their necessary and related operations, are also exempt from the overtime provisions of the Act by virtue of Section 7(c) thereof, since they are employees in a place of employment where their employer, i.e., the plaintiff, is

engaged in the 'processing of . . . sugar cane . . . into sugar (but not refined sugar) or into syrup . . .'. In this connection plaintiff further contends that such exemption is applicable throughout the year, including the 'off season', and

"c. That the employee defendants, when they are repairing and maintaining the plantation houses and related domestic facilities, and all other employees of plaintiff when they are performing similar work are not 'engaged in commerce or in the production of goods for commerce' as the terms 'commerce' and 'produced' are defined in Sections 3(b) and 3(j) of the Act, and therefore the provisions of the Act do not apply to said employees; but even if they [470] are so engaged, they are exempt from the overtime provisions of the Act by virtue of Section 13(a)(6) or of Section 7(c)."

The contentions of the defendants are:

"A. That none of the defendant-employees, nor other employees of plaintiff similarly situated, are exempt from the provisions of the Act by virtue of Sec. 13(a)(6) or Sec. 7(c), save as follows:

(1) Such employees may be exempt under Sec. 13(a)(6) during the work-weeks when they are engaged exclusively in work performed immediately and directly in the cultivation and tillage of the soil, and the production, cultivation, growing, and harvesting of sugar cane. In this connection defendants contend that harvesting is completed immediately upon the severance of the sugar cane from the earth so that where sugar cane is severed from the soil and thereafter placed into rail cars, even

though by the same machine or machine process, the placing of the cane into rail cars is not harvesting and is not exempt.

(2) Such employees are exempt under Sec. 7(c) during the work-weeks when they are engaged exclusively in tasks and duties performed directly, immediately, and exclusively in connection with the processing of sugar cane. In this connection, defendants contend that the processing of sugar cane is commenced with the washing operation at the mill and is completed when the crystals of sugar are removed from machines into either bins or bags. Hence tasks performed by employees of plaintiff prior to the washing operation, as well as after the raw sugar is placed in bins or bags, are not exempt. Defendants further claim that none of plaintiff's employees working in and about plaintiff's mill are exempt under Sec. 7(c) during [471] the off-season referred to on page 32 et sequi of the Stipulation of Facts on file herein, or during work-weeks in the grinding season when they perform any work in and about the mill during the 24-hour shutdown period referred to on page 21, et sequi, of the Stipulation of Facts.

“B. That all of the employee-defendants and all other employees of the plaintiff who are similarly situated, including those engaged in the maintenance and repair of plaintiff's dwelling houses and other facilities, are ‘engaged in commerce or in the production of goods for commerce’ within the meaning of Sec. 7(a) of the Act.”

* * * *

When the burden is placed on a busy trial court to interpret singlehanded the true and full meaning of a complicated Act of Congress out of which important conflicting contentions have arisen, the judge is, quite naturally, in a difficult situation, particularly where the matters involved are of grave importance to a great industry and affect in a heavy degree the interests of a large number of working-men, knowing as he does that other courts have held divergent views as to some of its parts and that his reasoning and findings will be placed for scrutiny and analysis before higher courts and eventually the highest court of the Nation. However, the life of a trial judge seldom runs in still waters, and the best he can do is to give his best efforts without wasting too much time in research and refinements.

At the beginning, I will say that in my opinion, practically every person employed in the work of a sugar plantation in Hawaii is employed in "commerce" as it is defined and dealt with in the Fair Labor Standards Act. [472] The work, purpose, and aim of a sugar cane plantation is to produce the greatest possible amount of high content cane at the least cost, and then extract, or have extracted, the greatest profitable amount of juice from it and turn it into raw sugar and molasses for further refining and marketing abroad, and in the case of plaintiff, every person employed by it in furtherance of sugar production is, in such employment, an interlocking part of "commerce," whether his employment is in the fields, installing, operating or

repairing machineries, cleaning yards surrounding plantation labor houses, or checking finished raw into carrier conveyances, and irrespective of whether or not his work comes within the two exempted classifications, "agriculture" or "processing". He need not be working directly in the production of any "commerce" commodity, so long as his occupation is specially necessary in the practice undertaken for its production.

The first contention of the plaintiff, that all of its employees are "employed in agriculture" as the term "agriculture" is defined in the Act, and are therefore exempt from the entire operations of the Act, would, of course, dispose of the case at once if adopted. I cannot possibly accept this as the intent and meaning of the law.

In framing the definition of "agriculture" Congress made it broad enough to cover every operation of preparing the soil and growing and harvesting sugar cane and, in the event it were marketed by the farmers, preparing and delivering it to market—everything incidental to "or in conjunction with such farming operations", but it certainly is clear that Congress did not mean nor desire this definition of "agriculture" to be construed to cover or include the "processing" of sugar cane into raw sugar; it would not have [473] done part of its work over again by formulating and enacting subsection (c) in Section 7, exempting the "first processing" of sugar cane from the maximum working hours provisions of the Act if it had intended "agriculture" to embrace this exemption. It is perfectly

clear that Congress considered processing as something different from farm operations and not conjoint with it.

It is also quite certain that in framing and enacting the Fair Labor Standards Act, Congress had definitely in mind the humanitarian view that the time had come in American industrial affairs when workmen in interstate commerce transactions (which was as far as Congress could reach industry's hours and wages in legislation) should receive a fair standard of wages and be required to work for that wage no longer than forty hours (after 1941) each work-week. That this would add a burden on industry which, in all probability, would have to be passed on to the consumer was well known. Relief to workingmen was the overall consideration and purpose of the Act, as declared by the President, and as set forth in the "findings and declaration of policy" in Section 2 of the Act.

In the case of *A. H. Phillips, Inc., vs. Walling*, 324 U. S. 490, 493, Justice Murphy speaking for the court, said:

"The Fair Labor Standards Act was designed 'to extend the frontiers of social progress' by 'insuring to all our able-bodied working men and women a fair day's pay for a fair day's work'. Message of the President to Congress, May 24, 1934. Any exemption from such humanitarian and remedial legislation must therefore be narrowly construed, giving due regard to the plain meaning of statutory language and the intent of Congress. To extend an exemption to other than those plainly and unmis-

takably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people.” [474]

Numerous courts and cases in dealing with the Act have emphasized that it is broad and comprehensive, having the special purpose of covering all workmen in commerce or the production of goods for commerce—except those specifically and clearly exempted—and that its remedial purposes should be liberally construed and its exemptions to coverage should be narrowly construed; this is reiterated many times and in many cases.

If we follow this concept, and I believe that to be the duty of the court, then it is plain that “agriculture”, while it clearly includes farming in all its branches, several of which are enumerated in the Act’s definition, as well as “other things”, not specified, and practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, leaves a number of the operating acts and agencies of the plaintiff outside the definition of farming or “agriculture”. My view is that the “other things” included in farming practices and incident to and in conjunction therewith, but not specified, were intended to cover the farming practices that are applicable and incidental to situations that may arise in the development of various kinds of produce in agriculture, horticulture, stockraising, bees, nurseries, forestry, etc., such as spraying, fertilizing, irrigating, pruning, pollinating, grafting, fire or frost protections, milking, slaughtering, shearing, hide preservations, castrat-

ing, branding, and similar practices that appertain to particular branches of farming, nursery and ranching. [475]

It is conceivable from the theory advanced in plaintiff's first contention, that if an agricultural enterprise becomes large enough to embrace within its ownership and management a number of distinctively separate industrial operations which, when standing alone are indisputably covered by the Act, the exemptions given to it as a farm, would become applicable to all of its combined industrial operations. I cannot follow this theory all the way, for its application could work a defeat of the humane purposes of the Act through an increasing growth of powerful industrial concerns in acquiring ownership and bringing under their management non-agricultural sources of supply, and thus separating more and more workers from the wage and hours benefit of the Act and could even defeat "oppressive child labor" provisions contained in it.

A number of sugar plantation corporations in Hawaii are rapidly expanding by amalgamation with others and growing larger in capital resources and operations. The president of Hawaiian Sugar Planters Association in his annual report a number of years ago made the following logical and frank statement, which was printed in local newspapers, as well as in the Congressional Record:

"As has been emphasized again and again, the primary function of our plantations is not to produce sugar, but to pay dividends."

If the situation were one involving a group of farmers who grew and harvested cane, the cane being transported by a railroad company or an independent trucking concern to a separately owned factory which processed it, plainly the agricultural exemption would be confined to the activities of the farmers. The transit activities of the railroad [476] company could in no way be said to come under the agricultural exemption, no more than could the operations of a fertilizer factory from which the farmers procured their needed fertilizer. Similarly, the factory operations would be wholly separate from agriculture. Assuming that the farmers, the carrier, the fertilizer factory and the milling company united together, forming a corporation, and took title as a sugar plantation company, would it be entiled over all to the exemption intended for and given to the farmers? I do not think so; the substance of the situation is controlling, not its form, and the ownership and management of these several links that may be united together in the production of raw sugar and molasses does not seem of importance in construing the Act's meaning of "agriculture."

Plaintiff lays stress on the definition of the word "production" (Sec. 3(j)) and construes it to cover all forms and activities of transportation. I do not so construe the words "handling" and "transporting" as used in this Section. My opinion is that they refer to those operations in "agriculture," such as are involved in this case, in planting seed, promoting growth, harvesting, assembling produce

for carriage, and associated activities up to that point; and in "processing," to the handling and transporting activities involved in getting the cane from the mill yard through the cleaning process, weighing it, and then into and through the mill and other processing operations to the point of shipment as raw sugar or molasses. True, some cases hold the meaning of both "agriculture" and "processing" to be restricted to much narrower activities than those above mentioned. We may never know with certainty the correct answers until the Supreme Court gives them. [477]

The plaintiff contends that its employees who work in transporting cane from certain places in the fields to the mill are performing work essentially incidental to or in conjunction with a purely agricultural pursuit. A decision of the First Circuit Court of Appeals in *Vives vs. Serralles*, 145 F. 2nd, 552, found distinctly different, holding that, in the facts of that case, from the point of concentration of sugar cane in the fields, through the transportation operations thereafter up to the mill itself, such transportation activities were incidental to the operations of the mill and not to agriculture. I cannot believe that either view is correct. The agricultural aspect terminates upon the harvesting and loading of the cane into cars for transport to the sugar factory. The train crews are not engaged in any act of producing sugar cane, nor in processing it into sugar merely because they are employed by the same company that employs the farm hands or processing crews, and Section 7(c) does not em-

brace activities which are "incidental" to or in conjunction with mill operations. It does not mention incidentals. In this section, the Congress expressed its intention of exempting from the maximum hours provision of the Act only those mill employees engaged in processing cane into raw sugar or molasses. Railroad operation is a systematic business calling for the employment of skilled, experienced men, trained to quick, keen preception (not farmhands or millhands) for handling locomotives and moving cars (not the goods in transit) and for the maintenance of roadbed, track and structures, and roundhouse care and servicing of locomotives—all specialized technical work. It is as different from farming or processing operations as day is to night. The nature of work [478] an employee does, that is the thing that controls the question as to whether his work is within or without the protection of the Act, not the classification that his employer, whether farmer, manufacturer, or exporter, gives to the job.

"In determining whether an employee is exempt from this chapter, the criterion is the character of work performed as disclosed by the record rather than the title of employee's position." *Walling vs. Snyder Min. Co.*, 66 F. Supp. 725.

If a man is employed to drive a timbered tunnel into the earth he is employed as a miner, no matter if a farmer hires him, pays his wages, and the tunnel is on a farm, nor would it matter how need-

ful the tunnel was to the economy or facility of the farmer's business in connecting two divisions of his farming business; he could not be classed as an exempted farm employee, irrespective of whether his work was in or out of commerce.

I consider mainline railroading as entirely apart from agriculture, as defined in the Act, even though the road may be owned by one engaged in agriculture and hauls nothing but agricultural produce produced by him, and this would apply to automotive trucking of produce for processing as well. About 462,500 tons of cane are handled on Waialua Plantation in a year—a very substantial transport operation, over many miles of trackage.

If Congress had said that raw sugar production should be given an exemption from the operation of the Act, that would have been a different proposition; but the parts of the Act here dealt with exempts only agriculture or farming on one hand, and processing on the other. As an illustration: If lumber production were exempted, it would include logging and all forms of transportation and other operations necessary to the business up until the production of lumber. But if two factors only, that is, forestry, [479] including its harvestry and its "preparation for market, delivery to storage or to market or to carriers for transportation to market," and lumber mill processing (but not surfacing or other refinements) were given different and separate exemptions, then the transportation of the logs from the forest to the distant mill would be a separate activity, so distinct in its nature that we

could not extend the reach of either forestry or milling exemptions to encompass it.

In my opinion, all employees who are employed in or on the roadbed, tracks, structures, cars and locomotives of plaintiffs' railroad system, including round house and rolling stock, repair and building shops, and flagmen, watchmen and dispatchers, are covered by the Act. Further, I believe that where automotive trucks are substituted for locomotives and cars in carrying plantation freight, their operators likewise, with their upkeep crews, are covered.

As to the portable tracks for getting loaded cane cars in and out of the fields for loading and back to the reach of locomotives, as described in this case, my opinion is that the laying and shifting of these sectional tracks and the loading and moving, by hand, horse or tractor of cane cars placed upon them is a part of the harvesting operation and the assembling of the harvested crop at centralized points ready for transportation, and is therefore incidental to cane farming. Certainly all the ordinary field operations, pertaining to the growing and harvesting of a cane crop, come within the exemptions given to farming, and this is such a field operation. Also, the picking up and reloading by field employees of cane stalks which have fallen from cars between the fields and mill, I consider a part of harvesting. [480]

Good argument, supported by authorities, has been advanced by defendants that these operations performed on laying and shifting portable tracks

and the moving of cars over them are not covered by any exemption, as they are neither agricultural or processing work, but performed by separate gangs of men who are specialized and work at nothing else during harvesting seasons, touching neither farming, harvesting or processing. This presents a close question, however, my reasoning dictates that this work being necessary to and closely related to harvesting and loading, in positioning and spotting empty cars in the fields and then getting them off the tillable fields, back to points where they can be reached by locomotives operating on the mainline, is, under practices long established and prevailing on plaintiff's plantations, an essential part of harvesting.

We now come to the mill or factory operations, which are exempted as to hours, but not as to wages, to consider how far this exemption was intended to reach.

Congress was clearly aware of the fact that harvested crops and many horticultural and farm produce, including sugar cane, are subject to rapid deterioration and perishment, and, from discussions at Congressional hearings, it appears that a number of members of Congress were unquestionably acquainted with sugar cane and suger beet farming as practiced in their sections of the country where such crops are seasonal and often come to the processing plants from numerous producers whose harvesting operations and transporting facilities may be not fully coordinated with milling operations. It is plain that in sympathy with the problems of this

class of seasonable crop farmers and processors, and in public interest as to sugar consumers, which includes practically every household of the nation, Congress felt not only justified but eager to relieve them and all other perishable crop processors [481] of the burden of overtime wages (for fourteen weeks of each year, as to other farm produce processors) to employees in any place of employment where they are engaged in the operation of "first processing".

We have seen that this exemption to "processors" is separate and distinct from the exemption given to "agriculture"; it is a lesser and limited exemption. How far does it reach outside of the processing plant, or mill, in the case of sugar, if any distance? My opinion is that the Act was intended to reach the produce to be dealt with after it is brought alongside its unloading platforms or delivered to it in its storage yard in which it has its own facilities, by gravity and mechanical traction, for bringing it into actual processing operations.

From there on, Section 7(c) of the Act clearly exempts all acts that are involved in processing the cane into raw sugar, and I hold that this includes weighing, cleaning, crushing, juice treatments, crystallizing, and the bagging of the product and the removal of it from bagging and sewing machines and depositing it in an adjacent warehouse, bins, tanks, or directly into cars or trucks, if immediately available alongside the bagging room, for shipment. With these several operations through

the factory the processing is begun and finished in the place where the processor is so engaged. Place where processing is carried on, conveys to my mind a meaning of the entire operating plant devoted to processing usage, whether within a building or open yard, and whether work there performed is mechanical or manual.

Evidence and argument discloses that in the boiler room, attached to the factory, steam is produced by burning bagasse, also fuel oil, under boilers and that part of this steam is used in engine power in driving the mill and otherwise in processing operations, and that part of it is used [482] to generate electricity in a separate building, some of which electricity is used in the mill and mill yard, as well as in the fields, and some in lighting employees' houses, offices, and for various domestic, recreational, and other purposes; occasionally small surplus amounts are sold to a public utility company. This usage raises a question as to whether or not the boiler room operations are exempt from the operations of the Act.

In the administration of the Act the Administrator, whose powers and duties are provided in the Act, has had the necessary duty from the beginning and from time to time of interpreting the Act. In an Administrative Interpretative Bulletin No. 14, which was put in evidence, the statement is made in paragraph 23(a):

"It is our opinion, therefore, that only the employees who perform the operations that are so closely associated thereto that they cannot be seg-

regated for practical purposes, and whose work is also controlled by the irregular movement of commodities into the establishment, are covered by the exemption. For example, in the ordinary case none of the employees in a department separate from the department in which the exempt operations are performed will be exempt."

And in Paragraph 18 of this Bulletin we find the following:

"Operations performed on bagasse, such as removing same from the sugar mill, baling and compressing, are not included in the exemption, since such operations do not constitute the 'processing of . . . sugar cane' and further such operations do not result in sugar or syrup. The exemption, it should be noted, is limited to the processing of sugar cane 'into sugar . . . or into syrup'."

While it is true that administrative interpretations are not necessarily binding on courts, all courts agree that they are entitled to careful consideration and weight, particularly if they have had a controlling effect for a considerable length of time. So far as I have been able to find, the above cited interpretation has not been discarded [483] by any court, but was affirmed in *Shain vs. Armour & Co.*, 50 F. Supp. 907, and *Walling vs. Bridgeman-Russell Co.*, 2 Wage & Hour Cases, 785-790—this rule is not inconsistent with the manifest intention and spirit of the Act and was clearly for the purpose of suppressing mischief and promoting the remedy.

It is my opinion that the rule is sound, that where an employee in commerce is assigned to perform,

n a given work-week, some work which is exempt and some which is not exempt, all of that particular employee's activities for the entire week are entitled to the protection of the Act. The work-week is the basis for measuring maximum hours time in Section 7 and, if no basis were adopted, there would be uncertain protection to employees in many conceivable cases. I therefore hold that employees in and about the boiler room who work in supplying fuel to the boilers, and those who tend the engines, dynamos, and other machinery and equipment used to generate and transmit electricity, are covered by the Act, whether they are in or outside the mill buildings.

This rule applies to and brings within the full protection and benefits of the Act every plantation employee of the plaintiff who works any part of any work-week in employment that is not exempted by either the agriculture or processing exemptions. In making this clearer, I will say that if an employee works part of a work-week in farming in the fields or in processing and the remainder of the work-week in employment not incident to or in conjunction with field farming work or directly and exclusively connected with processing operations, he is covered by the Act for the full work-week; if he works the entire week in either or both farming and processing, he is not covered, as the employer in both activities is exempt. [484]

Now, as to "off-season" work, in the processing plant and elsewhere. If we are to follow the strict construction rule as to exemptions, and I believe it incumbent on me to do so as, so far as I can find,

a preponderance of other courts do, then it is clear, in this case, that there is no processing during the time the processing plant is shut down—other than occasional drying of small amounts of low grade sugar called massecuite and the processing which nature performs in the crystalizers and on heavy molasses in settling tanks.

It matters not whether the processing operations are discontinued for a day or three months so long as there is a complete shutdown or suspension of processing. However, it is my opinion that a halt in some operations on account of breakdown of machinery or other gear or service, so long as any mechanical or manual processing operations are in action and the operating staff is in part working or standing by waiting for repairs or adjustments to be made, is not a discontinuance of processing, unless and until workmen in the essential factors of processing are released from those duties.

I am aware that all authorities do not agree with this view as to shutdowns, one or two believing that seasonal cleanups and repairs, even new machinery installations, are an essential part of processing, but my opinion is that this strains the meaning of processing and could carry it into a great variety of capital expenditures and side lines. Getting ready to process is not processing, nor is cleaning up after the processing is done. The employee, as well as the employer, must, at the time, be “engaged” in the processing to bring into operation the exemptions; it is not enough that the employer be merely established in the business of processing.

I lean strongly to the view expressed by the district judge on the ground in the Puerto Rican case of *Mainsonet vs. Central Coloso, Inc.*, 2 Wage & Hours Cases, 753, wherein the court said:

“The primary purpose of the exemption in question is to permit the employment of persons in seasonal industries, particularly where perishable commodities such as sugar cane is concerned, without the hardship of paying overtime * * *. But this situation does not obtain during the dead season. There is no similar reason why employees should work more than 40 hours in ‘construction and repair work and preparation of the mill for the coming grinding season (azfra).’ ”

In the *McComb vs. Consolidated Fisheries Co.*, case cited by plaintiff, it appears that the court’s judgment was swayed by the view that there was no shutdown season in that case, as processing continued daily and some 200 tons of fish scrap were processed during the time that no additional fish were brought into the plant.

* * * *

Both parties stipulated orally in the trial and have since done so in writing, praying for a special hearing on the status of each one of the employee-defendants whose work is discussed in the pleadings and voluminous stipulations.

Inasmuch as all parties seek declaratory guidance from the court in respect to future activities and pay practices, as well as a determination of past liability, it seems appropriate, if not incum-

bent upon the court, to say again and indicate at random a few situations which would call for application of the rule that commingling the work of employees in exempt activities with activities that are not exempt under the law, brings all activities of that employee, within any work-week, under coverage of the Act. [486]

The burden of proof is upon the plaintiff to show that an employee comes within the exemptions. *Bowie vs. Gonzalez*, 117 F. 2d 11, and "the exemptions must be strictly construed in order to secure * * * liberality of coverage."

On this basis of understanding the parties should be able to arrive at an agreement as to each employee without further trial.

Illustrations, which are merely indicative:

Timekeepers whose duties include keeping time for both covered and exempt workers are, in any work week in which their work is thus dual, covered for the entire week; the same is true of warehousemen and material clerks whose business it is to dispense or account for repair parts or materials and supplies to both exempt and covered workers; laborers who load stones on conveyances in the fields are covered by the law if such material is to be used for structural building or repair work other than the conservation of the fields or farm lands; likewise, machinists in the mill who at times perform work for use outside the mill are controlled by the work they perform in any work-week, and artisans, mechanics, and laborers

throughout the entire plantation organization are covered, unless in any workweek their employment is wholly and strictly within the exemption given to agriculture or processing as these operations are circumscribed by interpretations hereinabove, set forth.

If the parties are unable to adjust their differences and if further trial is desired on points that are considered to be in controversy, which are at issue [487] in the pleadings, and which are not dealt with herein, or, if either party desires further findings and shall present the same by Motion to the court within thirty days, the same will be given consideration and hearing at a time to be fixed by the court.

Dated at Honolulu, Hawaii, April 8, 1948.

/s/ D. E. METZGER,

Judge, U. S. District Court, District of Hawaii.

[Endorsed]: Filed April 8, 1948. [488]

[Title of District Court and Cause.]

MOTION FOR ORDER DIRECTING ENTRY
OF FINAL JUDGMENT

Come Now the defendants above named by and through their attorney of record, Richard Gladstein, Esq., and move the above entitled court for an order directing entry of final judgment in the above entitled action, and present herewith a Judg-

ment for the approval of the above entitled court, and pray that the court make its order for the entry of said Judgment in the above entitled action.

Dated May 13, 1948.

/s/ RICHARD GLADSTEIN,
Attorney for Defendants.

Receipt of copies of the foregoing Motion, and of the Order and Judgment referred to herein, is hereby acknowledged, and the notice of time and place for the presentation of the foregoing Motion is hereby waived.

Dated May 13, 1948.

/s/ RUFUS G. POOLE,
Attorney for Plaintiff.

[Endorsed]: Filed May 22, 1948. [490]

[Title of District Court and Cause.]

ORDER DIRECTING ENTRY OF FINAL
JUDGMENT

The Court, having heard the parties, being fully advised, and good cause appearing therefor, pursuant to Rule 54(b), as amended, of the Federal Rules of Civil Procedure, hereby expressly directs the entry of final judgment in the form approved this day, on the issues raised by the Complaint herein, prior to the adjudication of the issues presented by Paragraph XI of defendants' Amended

Answer and Cross-Complaint (counterclaim) and plaintiff's Answer (reply) to said Cross-Complaint (counterclaim), which issues are referred to in the Order Granting Joint Motion for Separate Trial entered herein on March 22, 1948, and hereby expressly determines that there is no just reason for delay in the entry of the foregoing final judgment.

The judgment hereby directed to be entered is upon less than all of the claims presented in this action, to the extent that the claims presented by Paragraph XI of defendants' Amended Answer and Cross-Complaint (counterclaim) and plaintiff's Answer (reply) to said Cross-Complaint (counterclaim) are not [492] hereby adjudicated. The trial of said claims not herein adjudicated shall be held separately at a future date, and a separate judgment shall be rendered thereon. The judgment hereby ordered to be entered shall not terminate this action as to those claims which are hereinabove reserved for future trial.

Dated May 22, 1948.

/s/ DELBERT E. METZGER,

Judge, United States District Court for the District of Hawaii.

[Endorsed]: Filed May 22, 1948. [493]

In the United States District Court for the
Territory of Hawaii

Civil No. 787

WAIALUA AGRICULTURAL COMPANY,
LIMITED,

Plaintiff,

vs.

CIRACO MANEJA, et al.,

Defendants.

DECLARATORY JUDGMENT

The above cause having come on for hearing on September 18, 19, 22 and 23, 1947, the parties being represented in court by their respective counsel, and evidence, both oral and documentary, having been introduced, and the court, after the filing of briefs on behalf of the respective parties, having on April 8, 1948, rendered its "Findings With Conclusions" herein,

Now, Therefore, It Is Hereby Adjudged, Decreed and Declared as follows:

Part I.

Each and every activity described in the Complaint and the Stipulation of the Facts submitted by the parties and on file herein when performed by any defendant employee or by [495] any other employee of plaintiff similarly situated, constitutes an engagement in commerce or in the production of goods for commerce within the meaning of Section 7(a) of the Fair Labor Standards Act of 1938

(hereinafter called the Act), and, by reason thereof all of the employee defendants, and those employees similarly situated, are "engaged in commerce or in the production of goods for commerce" as the terms "commerce" and "produced" are defined in Sections 3(b) and 3(j) of the Act.

Part II.

The following described activities, and all other activities performed in the cane fields of the plaintiff which are of a similar character to those listed in this Part, when performed by any defendant employee or by any other employee of plaintiff similarly situated, come within the exemption from the provisions of Section 7(a) of the Act provided by Section 13(a)(6) thereof:

AGRICULTURAL ACTIVITIES

1. The preparation of plaintiff's cane fields for planting and the planting, ratooning, cultivating, weeding and fertilizing of such fields.
2. The spraying of plaintiff's cane fields with insecticides or herbicides.
3. The hauling of stones from plaintiff's cane fields except where the stones are to be used for structural or building purposes.
4. The spreading of irrigation water on plaintiff's cane fields and the operation of its irrigation controls.
5. The laying, moving or removing of plaintiff's field irrigation flume.
6. The patrolling of irrigation ditch lines, the

cleaning or weeding of irrigation reservoirs and irrigation [496] and drainage ditches and tunnels.

7. The grading of plaintiff's cane fields in connection with the irrigation and drainage thereof; and the filling of holes, gulches and ditches in such fields.

8. The harvesting on the plantation of plaintiff's sugar cane fields, including all activities and operations performed in such fields in connection with such harvesting operations, up to the point where the cane is severed from the ground and loaded into conveyances, except that where the cane is loaded into a rail car the exemption provided by Section 13(a)(6) of the Act shall continue until such car is hauled from the field and reaches the main line of plaintiff's railroad.

9. The picking up and reloading by field employees of plaintiff of cane stalks which fall from rail cars or trucks between plaintiff's fields and plaintiff's mill.

10. The performance of emergency repairs on plaintiff's agricultural equipment, implements or machinery in the fields, but this shall not include overhauling or general repair.

11. The keeping of time of plaintiff's field workers whose activities are exempt under Section 13 (a)(6) of the Act as herein set forth.

Part III.

Except as provided in Part IV hereof, the following described activities, and all other activities performed in and about plaintiff's mill building

which are of a similar character to those listed in this Part, when performed by any defendant employee or by any other employee of plaintiff similarly situated, come within the exemption from the provisions of [497] Section 7(a) of the Act provided by Section 7(c) thereof but not within the exemption provided by Section 13(a)(6) thereof:

SUGAR CANE PROCESSING ACTIVITIES

1. The drawing of the rail cars into the cleaning plant of plaintiff's mill, the uncoupling of such cars at the cane carrier, the weighing of the cane, and the unloading of such cane into the cane carrier and the removal of the empty cars from the cane cleaning plant to the mill yard, and all work performed in the cleaning plant in connection therewith.

2. The operation of any and all equipment, machinery and facilities in the cleaning and crushing of cane, clarifying and crystalizing of sugar juices, bagging of the raw sugar, removing it from the bagging and weighing machines in plaintiff's mill and the depositing of the raw sugar or molasses into adjacent warehouses, bins or tanks, or directly into trucks or rail cars for shipment, and the repairing, cleaning and otherwise maintaining of such equipment, machinery and facilities when performed in the mill building proper and while cane processing operations are actually being conducted or during breakdowns with the operating staff of plaintiff standing by waiting for the repairs to be completed. The exemption provided for in this

paragraph shall not apply at any time however to the operation, repairing, cleaning or maintaining of equipment, machinery and facilities used by the plaintiff in its mill to burn bagasse or fuel oil or to produce steam or to generate or distribute electricity.

3. The erection of scaffolding in plaintiff's mill during breakdowns, with the operating staff of plaintiff standing [498] by waiting for repairs to be completed.

4. The performance of clerical work on the plantation in connection with plaintiff's cane processing activities where such work is performed in the mill building proper and during actual processing operations or during breakdowns with the operating staff standing by waiting for the repairs to be completed.

Part IV.

No activity is exempt by virtue of Section 7(c) if performed when the mechanical or manual processing operations of the plaintiff are actually suspended or discontinued for weekend cleaning or repairs or for plaintiff's off-season.

Part V.

All activities performed by any defendant employee or by any other employee of plaintiff similarly situated, other than those heretofore described in Part II and III of this Judgment, *supra*, are not within the exemption from the provisions of Section 7(a) of the Act provided by either Section 13(a)(6) or Section 7(c) thereof.

Part VI.

If any work week in which any defendant employee or any other employee similarly situated engages in an activity which is exempt from the provisions of Section 7(a) of the Act by virtue of either Section 13(a)(6) or Section 7(c) and also in an activity which is not so exempt, said employee is not exempt [499] for that work week from the provisions of Section 7(a) of the Act by virtue of either Section 13(a)(6) or Section 7(c).

Part VII.

In any work week in which any defendant employee or any other employee similarly situated engages in activities, some of which are exempt from the provisions of Section 7(a) of the Act by virtue of Section 13(a)(6) and the remainder of which are so exempt by virtue of Section 7(c), said employee is exempt for that work week from the provisions of Section 7(a) of the Act.

Dated May 22, 1948.

/s/ WM. F. THOMPSON, JR.,
Clerk, United States District Court for the District
of Hawaii.

The Court hereby approves the form of the foregoing final judgment and directs that it be entered

/s/ DELBERT E. METZGER,
Judge, United States District Court for the District of Hawaii.

[Endorsed]: Filed May 22, 1948. [500]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Waialua Agricultural Company, Ltd., plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from Parts I, III, IV, V and VI of the final judgment entered in this action on May 22, 1948.

Dated Honolulu, T. H., May 24th, 1948.

/s/ RUFUS G. POOLE,

/s/ E. C. MOORE,

Attorneys for Plaintiff.

[Endorsed]: Filed May 24, 1948. [502]

[Title of District Court and Cause.]

STIPULATION AS TO RECORD ON APPEAL

It is hereby stipulated by the attorneys for the parties hereto that the following shall constitute the transcript of record on appeal:

1. Complaint, together with attached Exhibits A, B, C, D, E, F, G, H and I—filed April 9, 1947.

2. Amendment of Complaint—filed July 18, 1947.

3. Answer to Complaint—filed September 12, 1937 at 3 o'clock and 50 minutes.

4. Stipulation of Facts—filed September 12, 1947 at 3 o'clock and 55 minutes. (As Exhibits A, B, C, D, E, F, G, H and I attached to Stipulation of Facts are identical to similarly lettered exhibits

attached to Complaint and hereinabove designated, they shall be omitted from the copy of said Stipulation of Facts.)

5. Copy of Transcript of Proceedings in subject case held in above named Court on September 18, 19, 22 and 23, 1947, filed with the District Court herewith, and defendants' Exhibits numbered 1, 2, 3 and 4, respectively, introduced in evidence in such proceedings. [504]

6. Amended Answer and Cross-Complaint [Counterclaim]—filed November 3, 1947.

7. Answer [Reply] to Cross-Complaint [Counterclaim]—filed November 19, 1947.

8. Joint Motion for Separate Trial pursuant to Rule 42(b) of issues raised by defendants' Amended Answer and Cross-Complaint [Counterclaim] and plaintiff's Answer [Reply] thereto—filed March 22, 1948.

9. Order Granting Joint Motion for Separate Trial—March 22, 1948.

10. Findings with Conclusions of District Court—filed April 8, 1948.

11. Motion Requesting Order Directing Entry of Final Judgment—filed May 22, 1948.

12. Order Directing Entry of Final Judgment—filed May 22, 1948.

13. Judgment of District Court—filed May 22, 1948.

14. Notice of Appeal by Plaintiff—filed May 24, 1948.

15. Notice of Cross-Appeal by Defendants—filed May 25, 1948.

16. This Stipulation as to Record on Appeal—filed May 25, 1948.

Dated: Honolulu, T. H., 25th day of May, 1948.

/s/ RUFUS G. POOLE,

/s/ E. C. MOORE,

Attorneys for Plaintiff.

/s/ RICHARD GLADSTEIN,

Attorney for Defendants.

[Endorsed]: Filed May 25, 1948. [505]

[Title of District Court and Cause.]

NOTICE OF CROSS-APPEAL TO CIRCUIT
COURT OF APPEALS FROM PART OF
JUDGMENT

Please take notice that the defendants above named hereby cross-appeal to the Circuit Court of Appeals for the Ninth Circuit from the following portions only of the judgment entered in the above entitled action on May 22, 1948:

1. From so much of Part II thereof as grants to plaintiff an exemption from Section 7 (a) of the Fair Labor Standards Act in respect of certain activities which are not performed directly, proximately and immediately in and upon the actual production of sugar cane.

2. From so much thereof as grants to plaintiff an exemption from Section 7 (a) of the said Act

in respect of certain activities which are not performed directly, proximately and immediately in and upon the transforming of sugar cane into unrefined sugar.

Dated: Honolulu, T. H., May 25, 1948.

/s/ RICHARD GLADSTEIN,
Attorney for defendants.

[Endorsed]: Filed May 25, 1948. [507]

[Title of District Court and Cause.]

AMENDMENT TO AND CORRECTION OF
NOTICE OF CROSS-APPEAL, AND
AMENDED NOTICE OF
CROSS-APPEAL

Notice is hereby given that, through inadvertence and mistake, the notice of cross-appeal heretofore filed herein did omit, from paragraph numbered 2, the phrase "of Part III," which phrase should appear immediately after the words "From so much."

Notice is further hereby given that the defendants do hereby amend and correct the said notice of cross-appeal by inserting the said omitted phrase at the place indicated as above. As so amended and corrected, the said Notice shall read as follows:

The defendants cross-appeal to the Circuit Court for the Ninth Circuit from the following portions only of the judgment entered in the above entitled action on May 22, 1948:

1. From so much of Part II thereof as grants to plaintiff an exemption from Section 7 (a) of the [512] Fair Labor Standards Act in respect of certain activities which are not performed directly, proximately and immediately in and upon the actual production of sugar cane.

2. From so much of Part III thereof as grants to plaintiff an exemption from Section 7 (a) of the said Act in respect of certain activities which are not performed directly, proximately and immediately in and upon the transforming of sugar cane into unrefined sugar.

Dated: Honolulu, T. H., May 26, 1948.

/s/ RICHARD GLADSTEIN,
Attorney for Defendants.

[Endorsed]: Filed May 26, 1948. [513]

[Title of District Court and Cause.]

STIPULATION TO ENLARGE RECORD ON
APPEAL

It is hereby stipulated by the attorneys for the parties hereto that the following documents shall be added and become a part of the transcript of record on appeal herein:

1. Amendment To and Correction of Notice of Cross-Appeal, and Amended Notice of Cross-Appeal—filed May 26, 1948.

2. Stipulation to Enlarge Record on Appeal—
filed May 26, 1948.

Dated: Honolulu, T. H., this 26th day of May,
1948.

/s/ RUFUS G. POOLE,

/s/ E. C. MOORE,

Attorneys for Plaintiff.

/s/ RICHARD GLADSTEIN,

Attorney for Defendants.

[Endorsed]: Filed May 26, 1948. [515]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America,
District of Hawaii—ss:

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify the foregoing pages numbered 1 to 519 inclusive, to be a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and that the costs of the foregoing transcript of record are \$31.70 and that said amount has been paid to me by the appellant.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 5th day of June, 1948.

(Seal) /s/ WM. F. THOMPSON, JR.,
Clerk, United States District Court, District of
Hawaii.

[Endorsed]: No. 11952. United States Circuit Court of Appeals for the Ninth Circuit. Waialua Agricultural Company, Limited, a corporation, Appellant, vs. Ciraco Maneja, et al., Appellees. Ciraco Maneja, et al., Appellants, vs. Waialua Agricultural Company, Limited, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed June 8, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 11952

WAIALUA AGRICULTURAL COMPANY,
LIMITED,

Appellant,

v.

CIRACO MANEJA, et al.,

Appellees;

and

CIRACO MANEJA, et al.,

Appellants,

v.

WAIALUA AGRICULTURAL COMPANY,
LIMITED,

Appellee.

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL

The appellant, Waialua Agricultural Company, Limited, intends to rely upon the following points in its appeal from the judgment of the United States District Court for the District of Hawaii entered in this action on May 22, 1948:

I.

The District Court erred in holding or failing to hold as follows:

1. In holding that each and every defendant employee and any other employee of plaintiff similarly situated are "engaged in commerce or in the production of goods for commerce" as the terms "commerce" and "produced" are defined in Sections 3(b) and 3(j) of the Fair Labor Standards Act of 1938 (hereinafter called the "Act"), when they are employed in the following activities:

(a) The building, repair and maintenance in plaintiff's plantation villages, of dwelling houses, and of all facilities, equipment and installations therein;

(b) The repair and maintenance of recreational buildings, structures and athletic fields in the plantation villages and of the various facilities, equipment and installations therein;

(c) The repair, maintenance and cleaning of streets, roads, yards and other areas located in and about plaintiff's plantation villages, including the pruning of shade trees;

(d) The operation, repair and maintenance of

sewage and sanitation facilities in and for plantation villages;

(e) The furnishing of water to the residents of plaintiff's plantation villages and the repair and maintenance of all equipment and facilities used therefor;

(f) The cutting of firewood from wooded areas on plaintiff's plantation to supply fuel to plaintiff's employees living on the plantation;

(g) The keeping of records of the construction and repair work performed on plaintiff's plantation dwelling houses and recreational buildings and grounds;

(h) The performance of any work similar to that listed in (a) to (g) supra;

2. In failing to hold that each and every defendant employee and any other employee of plaintiff similarly situated come within the exemption from the provisions of Section 7(a) of the Act provided by the agricultural exemption contained in Section 13(a)(6) thereof, when they are employed in any activity described in the Complaint and the Stipulation of the Facts submitted by the parties;

3. In failing to hold that each and every defendant employee and any other employee of plaintiff similarly situated come within the exemption from the provisions of Section 7(a) of the Act provided by Section 7(c) thereof, when they are employed in any activity connected with the transporting of sugar cane from the fields to the mill, processing sugar cane into raw sugar including the temporary storage and shipment of raw sugar, and their neces

sary and related operations including activities performed by the service shops personnel and the operation, repairing, cleaning or maintaining of equipment, machinery and facilities used by the plaintiff in its mill to burn bagasse or fuel oil or to produce steam or to generate or distribute electricity;

4. In holding that each and every defendant employee and any other employee of plaintiff similarly situated are not exempt by virtue of Section 7(c) if they perform their activities when the mechanical or manual processing operations of the plaintiff are suspended or discontinued for weekend cleaning or repairs or for plaintiff's off-season;

5. In failing to hold that each and every defendant employee and any other employee of plaintiff similarly situated are within the exemption from the provisions of Section 7(a) of the Act provided by either Section 13(a)(6) or Section 7(c) thereof, when they are employed in one or more of the activities described in the Complaint and the Stipulation of the Facts submitted by the parties;

6. In failing to hold that in any workweek in which any defendant employee or any other employee similarly situated engages in an activity which is exempt from the provisions of Section 7(a) of the Act by virtue of either Section 13(a)(6) or Section 7(c) and does not engage for any substantial part of his time during that workweek in an activity which is not so exempt, said employee is exempt for that workweek from the provisions of Section 7(a) of the Act by virtue of Section 13(a)(6) or Section 7(c).

II.

The District Court erred in admitting, relying upon, and crediting:

(a) the testimony of the defendants' witness Hall, which was incompetent, irrelevant and immaterial, constituted hearsay, and was lacking in credibility;

(b) defendants' exhibit number 4, which was incompetent, irrelevant and immaterial, and was lacking in credibility.

III.

The District Court erred in making findings of fact which are in conflict with the Stipulation of the Facts submitted by the parties and are not supported by the evidence, oral or documentary, introduced at the trial in the District Court. Said erroneous findings include, but are not limited to, the following:

(a) Finding that plaintiff conducts factory operations;

(b) Finding that the activities performed in the carrying on of plaintiff's business include railroad building;

(c) Finding that the main managerial business of the plaintiff is conducted through a "plantation agency house in Honolulu where most of its officers and directors are centered";

(d) Finding that the cane harvested on plaintiff's cane fields is assembled at centralized points ready for transportation;

(e) Finding that plaintiff generates some electricity in a separate building from its mill building;

(f) Finding that plaintiff sells small surplus amounts of electric power to a public utility company;

(g) Finding that a president of the Hawaiian Sugar Planters Association made the statement a few years ago that "As has been emphasized again and again, the primary function of our plantation is not to produce sugar, but to pay dividends";

(h) Finding that "Railroad operation is a systematic business calling for the employment of skilled, experienced men, trained to quick, keen perception (not farmhands or millhands) for handling locomotives and moving cars (not the goods in transit) and for the maintenance of roadbed, track and structures, and roundhouse care and servicing of locomotives—all specialized technical work. It is as different from farming or processing operations as day is to night";

(i) Finding that Section 7(c) of the Act exempts the "first" processing of sugar cane from the maximum hours provisions of the Act.

Dated: Washington, D. C., 14th day of June, 1948.

/s/ RUFUS G. POOLE,

Attorney for Appellant Waialua Agricultural Company, Limited.

(Verified.)

[Endorsed]: Filed June 18, 1948. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL BY CROSS-
APPELLANTS

The Cross-Appellants herein intend to rely upon the following points in their cross-appeal from the judgment of the United States District Court for the District of Hawaii entered in this action on May 22, 1948:

I.

The District Court erred in holding that Appellant is entitled, pursuant to Section 13(a)(6) of the Fair Labor Standards Act, to exemption from Section 7(a) of said Act in respect of certain activities performed in or about the cane fields of Appellant, which are not performed directly, proximately and immediately in and upon the actual production of sugar cane.

II.

The District Court erred in holding that Appellant is entitled, pursuant to Section 7(c) of the Fair Labor Standards Act, to exemption from Section 7(a) of the said Act in respect of certain activities performed in or about the mill building of Appellant, which are not performed directly, proximately

and immediately in and upon the transforming of sugar cane into unrefined sugar.

Dated this 25th day of June, 1948, at San Francisco, California.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

/s/ By RICHARD GLADSTEIN,
Attorneys for Cross-Appellants.

(Acknowledgment of Service attached.)

[Endorsed]: Filed June 28, 1948. Paul P. O'Brien, Clerk.

